

1 UNITED STATES DISTRICT COURT
 2 EASTERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

14-CR-399 (ENV)

4 Plaintiff,

United States Courthouse
 Brooklyn, New York

5 -against-

April 30, 2018
 10:00 a.m.

6 ABRAXAS J. DISCALA, ALSO
 7 KNOWS AS AJ DISCALA, AND
 KYLEEN CANE,

8 Defendants.

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 10 TRANSCRIPT OF CRIMINAL CAUSE FOR TRIAL
 BEFORE THE HONORABLE ERIC N. VITALIANO
 11 UNITED STATES DISTRICT JUDGE
 BEFORE A JURY

12 APPEARANCES

13 For the Government:

UNITED STATES ATTORNEY'S OFFICE
 Eastern District of New York
 271 Cadman Plaza East
 Brooklyn, New York 11201
 BY: SHANNON JONES
 MARK E. BINI
 PATRICK HEIN
 Assistant United States Attorneys

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 16
 17 For the Defendant:
 18 Abraxas J. Discala

CHARLES ROSS & ASSOCIATES, LLC
 111 Broadway
 New York, New York 10008
 BY: CHARLES ROSS, ESQ.

20 ANDREW BOWMAN, ESQ.
 1804 Post Road East
 21 Westport, Connecticut 06880

22 HANWEI CHENG, ESQ.
 15155 Gale Avenue
 23 Suite D
 Whittier, California 90603

1 A P P E A R A N C E S: (Continued)

2 Attorney for Defendant: SERCARZ & RIOPELLE, LLP
3 Kyleen Cane 810 Seventh Avenue
Suite 620
4 New York, New York 10019
BY: ROLAND RIOPELLE, ESQ.
ROBERT CALIENDO, ESQ.

5
6 Court Reporter: LINDA D. DANIELCZYK, RPR, CSR, OCR
7 Phone: 718-613-2330
8 Fax: 718-804-2712
Email: LindaDan226@gmail.com

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PROCEEDINGS

3007

1 (In open court; Jury not present.)

2 THE COURTROOM DEPUTY: All rise. Court is now open.
3 The Honorable Eric Vitaliano is now presiding.

4 The case on the calendar is *USA versus Discala and*
5 *Cane*, case number 14-CR-399 on for a jury trial.

6 Will counsel please note their appearance beginning
7 with government counsel.

8 MS. JONES: Sharon Jones, Mark Bini and Patrick Hein
9 for the United States. Along with Henry Ishitani and FBI
10 Special Agent Elyse Morris.

11 MR. ROSS: Good morning, Your Honor. Charles Ross
12 Matthew Shroyer and Scott Schwartz for Mr. Discala.

13 MR. BOWMAN: Good morning, Your Honor. Andrew
14 Bowman for Mr. Discala.

15 MR. CHENG: Good morning, Your Honor. Hanwei Cheng
16 Mr. Discala.

17 MR. RIOPELLE: Good morning, Your Honor. Roland
18 Riopelle and Robert Caliendo for the defendant, Kyleen Cane,
19 this morning.

20 THE COURTROOM DEPUTY: Counsel for both sides are
21 present for the defendants.

22 THE COURT: Good morning, all. Are we ready to go?

23 MR. BINI: Yes, Your Honor.

24 And the government will put the witness back on the
25 stand. And if you like, I will hand out the juror transcripts

1 to the jury now.

2 However, one thing. I just wanted to flag for the
3 Court, the government has prepared a letter, which we have to
4 get supervisor approval for in the next few minutes, and as
5 soon as we do, we will file it, which deals with four of the
6 witnesses, and many of the exhibits that are offered by
7 Mr. Discala.

8 Since we think our letter will crystalize those
9 issues after we file it, we will ask that we argue it at a
10 break before those witnesses are called because we believe
11 that much of the evidence offered by the defendant should be
12 precluded, either because it is irrelevant or because it calls
13 for expert testimony for which there's been no notice.

14 MR. ROSS: Judge, we will certainly argue against
15 that.

16 THE COURT: I would hope. But it will be a short
17 argument if it's only one side.

18 MR. BOWMAN: And I should just note the reason for
19 the government not filing already, is that the defense counsel
20 essentially dumped a bunch of 3500 on us on Saturday and
21 Sunday that was not previously produced.

22 MS. JONES: Your Honor, it's not just 3500
23 materials, the defendant produced on Saturday for the first
24 time a 147-page analysis by its accountant witnesses that
25 includes over a hundred schedules, and over 4,000 pages of

1 backup, and the first we got this was on Saturday evening.

2 MR. ROSS: And we can argue this at the break. I
3 don't want to take up time, but we've been doing everything
4 that we can to gather this material. The scope of the
5 prosecution's witness, Joan Mazella, was not known to us and
6 so we've done absolutely everything we can. This is a very,
7 very important witness to us. If the prosecution thinks that
8 the government thinks that they have a cross-examination to
9 expose the flaws in the analysis, then they can do that.

10 MR. RIOPELLE: And, Your Honor, Roland Riopelle. I
11 do have my last witness for Ms. Cane here, he's a very brief
12 witness.

13 THE COURT: You plan to take that witness after the
14 government rests?

15 MR. BOWMAN: Yes, he traveled from out of town.

16 THE COURT: That's fine.

17 MR. ROSS: Your Honor, at this point we only have
18 three witnesses. We have three witnesses that will all be
19 ready to go today.

20 MR. BOWMAN: Who are the witnesses?

21 MR. ROSS: We've given you notice.

22 MR. BOWMAN: You told us four yesterday.

23 THE COURT: Somebody dropped out.

24 MR. ROSS: Someone dropped out.

25 So it's Mr. Parker, Mr. Engstrom and Ms. Eckert.

PROCEEDINGS

3010

1 THE COURT: And the last one is the accountant?

2 MR. ROSS: Yes.

3 THE COURT: Okay. Okay. Thank you, it's a preview
4 of where we're trying to head today.

5 Other than that, we're ready?

6 MR. BOWMAN: Yes, Your Honor.

7 THE COURT: Okay.

8 (Whereupon, the witness resumes the stand.)

9 (Jury enters the courtroom.)

10 THE COURT: Be seated, please.

11 Counsel will stipulate that the jury are present and
12 properly seated.

13 MS. JONES: Yes, Your Honor.

14 MR. ROSS: Agreed, Judge.

15 THE COURT: Thank you, counsel.

16 Ladies and gentlemen, welcome back, especially for
17 those who survived the rail wars this morning. We're
18 appreciative and very understanding. We are ready to resume
19 this morning's session.

20 As you recall when we broke, that Special
21 Agent Voulgaris was on the stand.

22 I remind you, Special Agent, that you are still
23 under oath, and Mr. Bini was still conducting his direct
24 examination.

25 Mr. Bini, you shall continue.

VOULGARIS - DIRECT - BINI

3011

1 MR. BOWMAN: Thank you, Your Honor.

2 (Witness takes the witness stand.)

3 CONSTANTINE VOULGARIS, called as a witness, having been
4 previously first duly sworn/affirmed, was examined and
5 testified further as follows:

6 DIRECT EXAMINATION (Continued)

7 BY MR. BINI:

8 Q Special Agent Voulgaris, I'd like to ask you about
9 Government's Exhibit 198-41E, for excerpt.

10 And I would ask you to look in the transcript
11 binder, the juror transcript binder at Tab 18. And this is
12 call from at June 3rd, 2014 at 11:25 a.m.

13 When you have that transcript in front of you,
14 before we play it, I just wanted to ask you to identify the
15 participants to the call.

16 A 198-41?

17 Q Yes, sir.

18 A Kyleen Cane and Abraxas Discala.

19 Q Okay.

20 And is this a call that begins at 9:52 a.m.?

21 A Yes.

22 MR. BINI: If we can play the first clip through
23 02331.

24 (Audio recording played.)

25 Q Now I'll ask you to listen to the clip from five minutes

VOULGARIS - DIRECT - BINI

3012

1 and 56 seconds to eight minutes and 18 seconds in the same
2 call.

3 (Audio recording played.)

4 Q Now, I ask you in the same call to listen to the clip
5 from 10:29 to the conclusion of the call.

6 (Audio recording played.)

7 MR. BINI: Now I'd like to publish, Your Honor,
8 198-42E from beginning of the call to four minutes and 33
9 seconds.

10 THE COURT: You may.

11 MR. BINI: Before we do that, let me just ask the
12 witness.

13 Q Who are the participants of this call?

14 A Kyleen Cane and Abraxas Discala.

15 Q And what's the time of the call?

16 A 12:33 p.m.

17 MR. BINI: Okay, we can now listen to it.

18 (Audio recording played.)

19 MR. BINI: Your Honor, at this time if the
20 government could publish 198-57, a voice mail call from
21 June 2014.

22 THE COURT: You may.

23 (Audio recording played.)

24 MR. BINI: Now if I could publish to the jury
25 129-89, Your Honor, a text message in evidence.

VOULGARIS - DIRECT - BINI

3013

1 THE COURT: Please proceed.

2 (Exhibit published.)

3 Q Agent Voulgaris, who are these messages between?

4 A Kyleen Cane and Andy McAlpine.

5 Q And what type of messages are they?

6 A They're text messages.

7 Q What are the date of these messages?

8 A June 7th, 2014.

9 Q What is the first message in the series?

10 A That stock is creeping up.

11 Q And what's the response to that?

12 A You have a million shares; wasn't it?

13 Q And what's the response to that?

14 A First deposit will be 270,000, but there will be two
15 more.

16 Q What's the next response after that?

17 A Okay, great.

18 MR. BOWMAN: Your Honor, if the government could
19 publish to the jury 198-51E, excerpt of a call from one minute
20 31 seconds to one minute 49 seconds.

21 THE COURT: You may.

22 MR. BOWMAN: I'll just ask the witness before we
23 play the call.

24 Q Who are the participants to this phone call?

25 A Abraxas Discala and Craig Josephberg.

VOULGARIS - DIRECT - BINI

3014

1 Q And what is the date of the call?

2 A June 12th, 2014.

3 Q The time of the call?

4 A 9:53 a.m.

5 MR. BOWMAN: If we can now publish it.

6 (Audio recording played.)

7 Q Now, Your Honor, if we could publish to the jury 198-52.

8 THE COURT: You may.

9 (Exhibit published.)

10 Q Special Agent Voulgaris, who are the participants of this
11 call?

12 A Abraxas Discala and John Arlo.

13 Q Who is John Arlo?

14 A He was a junior trader, broker at BMAC securities.

15 Q And what is the date of this call?

16 A June 12th, 2014.

17 Q The time?

18 A 10:02 a.m.

19 Q Is BMAC securities where Darren Goodrich also worked?

20 A Yes.

21 MR. BOWMAN: If you could play the call.

22 (Audio recording played.)

23 Q Special Agent Voulgaris, during the time that you were
24 intercepting calls pursuant to the wiretap, were you also
25 looking at stock prices?

VOULGARIS - DIRECT - BINI

3015

1 A Yes.

2 Q If we can look to Government's Exhibit 196-16 in
3 evidence.

4 (Exhibit published.)

5 What did the stock price of StarStream close on
6 June 11th of 2014, the date before this call?

7 A Forty-three cents a share.

8 Q And where did it close on June 12th of 2014?

9 A Fifty-nine cents a share.

10 MR. BOWMAN: Your Honor, at this time the government
11 would ask to publish to the jury 198-77E.

12 THE COURT: You may.

13 Q Agent Voulgaris, what is the date of this call?

14 A June 12th, 2014.

15 Q And who the participants?

16 A Abraxas Discala and Craig Josephberg.

17 Q And if would he could now listen from the start -- I'm
18 sorry, what's the time of this call?

19 A 10:12 a.m.

20 MR. BINI: Listen from the start to one minute and
21 three seconds.

22 (Audio recording played.)

23 MR. BOWMAN: Your Honor, the government asks to
24 publish to the jury at this time 198-60 in evidence.

25 THE COURT: You may.

VOULGARIS - DIRECT - BINI

3016

1 (Exhibit published.)

2 Q Agent Voulgaris, who are the participants to this phone
3 call?

4 A Kyleen Cane and Abraxas Discala.

5 Q What is the date of this phone call?

6 A June 24th, 2014.

7 Q What's the time of the call?

8 A 3:54 p.m.

9 MR. BOWMAN: You may now play it for the jury.

10 (Audio recording played.)

11 Q Special Agent Voulgaris, did there come a time that you
12 stopped intercepting phone calls?

13 A Yes.

14 Q And when was that approximately?

15 A June 29th, 2014.

16 Q When we spoke on Thursday, you spoke about your role in
17 the arrest procedures on July 17th, 2014.

18 I'd like to ask you, after you determined that AJ
19 Discala was not at his home in Connecticut, did you contact
20 other agents?

21 A Other agents were contacted, yes.

22 Q In what state?

23 A Nevada.

24 Q And did you learn that Abraxas Discala and Kyleen Cane
25 were arrested that same day?

VOULGARIS - CROSS - BOWMAN

3017

1 A Yes.

2 MR. BOWMAN: No further questions, Your Honor.

3 THE COURT: Thank you, Mr. Bini.

4 Any cross?

5 MR. BOWMAN: Yes, Your Honor.

6 THE COURT: Mr. Bowman, you may cross for

7 Mr. Discala.

8 CROSS-EXAMINATION

9 BY MR. BOWMAN:

10 Q Agent Voulgaris, do you know who Joseph Salvani is?

11 A Yes, sir, I recall the name from the investigation.

12 Q And who is he?

13 A At this time I don't know exactly what role he was or if
14 he was just an investor.

15 Q Did you know that Joseph Salvani, Dan Walsh, Jeff
16 Auerbach and Eli Wahrsager introduced the CodeSmart
17 transaction to Mr. Discala?

18 A In part I know some of the individuals did, yes.

19 Q Did you know that there was a 4 million-dollar pipe that
20 had been committed to CodeSmart?

21 A I guess, yes.

22 Q And a 20 million-dollar student loan facility? Did you
23 know that?

24 A Off the top of my head, I don't recall.

25 Q Did you know that over \$2 million was previously invested

VOULGARIS - CROSS - BOWMAN

3018

1 in the company?

2 A I don't recall that.

3 Q Did you know that there was a committed broker network in
4 place by the time the CodeSmart was presented to Mr. Discala?

5 A I was unaware of that.

6 Q Did you know that there had already been an audit that
7 was required for an APO offering that had been done by the
8 time this CodeSmart transaction was presented to Mr. Discala?

9 A I'm aware public entities required it had an audit, but
10 not in this specific case.

11 Q So you didn't know the details of how this transaction
12 was presented to Mr. Discala?

13 A Some of the details -- I was aware of some of the
14 details. I would say, you know, who conducted the audit. And
15 some other specifics details that they already had potentially
16 had a broker/dealer in place, I wasn't aware of that.

17 Q Did you know who Ira Shapiro was?

18 A Through the investigation, yes.

19 Q And who was he?

20 A He was the CEO of CodeSmart.

21 Q And did you know that Mr. Shapiro had failed to disclose
22 to Mr. Discala OmniView and investors that there was
23 approximately \$2.3 million?

24 MR. BINI: Objection. Hearsay.

25 THE COURT: Sustained.

VOULGARIS - CROSS - BOWMAN

3019

1 MR. BOWMAN: I'm asking if he knew. He testified to
2 his investigation, Your Honor.

3 MR. BINI: Misstatements. Objection. Hearsay.

4 MR. BOWMAN: It's cross-examination, Your Honor.

5 THE COURT: You're asking him -- let me talk to you
6 at sidebar.

7 (Continued on the next page.)

8 (Sidebar conference.)

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SIDEBAR CONFERENCE

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1 (The following occurred at sidebar.)

2 MR. BOWMAN: I'm asking him if he knew. He's
3 testified to what he did in his investigation. So I want to
4 go through this. It was a 2.3 million-dollar payment that
5 Shapiro had to make to a shareholder that was not disclosed.

6 THE COURT: That's different then asking him about a
7 conversation. He can state that as a fact.

8 MR. BOWMAN: So I can ask him if he knew.

9 THE COURT: Is he aware of that.

10 MR. BOWMAN: Right. Sure.

11 THE COURT: Which may or may not be true.

12 MR. BOWMAN: I'm going to ask him if was aware of
13 it.

14 THE COURT: If you have a good faith basis to ask.

15 MR. BOWMAN: Yes.

16 MR. BINI: Okay. Thank you, Your Honor.

17 (End of sidebar conference.)

18 (Continued on the next page.)

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VOULGARIS - Cross - BOWMAN
PROCEEDINGS

3021

1 (In open court; Jury present.)

2 BY MR. BOWMAN:

3 Q Were you aware that there was a 2.3 million-dollar
4 payment that was made by Ira Shapiro to acquire the remainder
5 of the outstanding shares of CodeSmart?

6 A I don't recall.

7 Q Did you know that Mr. Discala joined the SSET board of
8 directors?

9 A I don't recall at this time.

10 Q Did you know whether Mr. Discala had any stock he was
11 able to trade as a result of his joining the board of
12 directors?

13 A In his own name?

14 Q Yes.

15 A I'm not certain if he had any shares in his own name.

16 If there's something that you have to present to me
17 to refresh my recollection.

18 Q Well, as you sit here today, do you know whether
19 Mr. Discala traded any shares in SSET?

20 THE COURT: In his own name?

21 MR. BOWMAN: In his own name.

22 A I can't recall him trading anything in his own name.

23 Q And that's with respect to StarStream?

24 A Correct.

25 Q Did you know whether Mr. Discala sold all his

VOULGARIS - Cross - BOWMAN
PROCEEDINGS

3022

1 freely-tradeable shares of TSGL owned by him at 1 cent a
2 share?

3 A As I just said, I don't recall.

4 Q Do you know whether Mr. Discala traded any shares of TSGL
5 in his own name?

6 A Again, unless I have the records in front of me, I don't
7 recall right now.

8 Q You're the case agent; are you not?

9 A At one point I was the case agent.

10 Q And what the point was that?

11 A At the onset I was the co-case agent. I'd have to say a
12 year, a year and a half ago I became the case agent for this
13 investigation.

14 Q But you conducted over 50 interviews?

15 A That's correct.

16 Q And you as a co-case agent had the responsibility to know
17 what was happening in the investigation?

18 A That's correct.

19 Q Did you think it was important for you to know whether
20 Mr. Discala made a profit or a loss trading StarStream or
21 TSGL?

22 A Within the course of the investigation I'm sure I saw it.
23 At this time I don't recall if I came across those records. I
24 most certainly did. I do recall we subpoenaed those records.
25 We did receive lucent data and bank analysis regarding in

VOULGARIS - Cross - BOWMAN
PROCEEDINGS

3023

1 Mr. Discala's accounts. But I just can't recall at this time.

2 Q Did you know that Mr. Discala lost \$2 million trading
3 Soul?

4 A I can't --

5 MR. BINI: Objection. Relevance.

6 THE COURT: I'm going to allow it.

7 Q Did you -- do you understand the question?

8 A I understand the question.

9 Q Were you aware that Mr. Discala lost approximately
10 \$2 million trading Soul?

11 A I was aware he did incur a loss. But to the extent of
12 how much it was, I can't recall.

13 MR. BOWMAN: Can we have 177-27 Government exhibit,
14 please.

15 THE COURT: In evidence, Mr. Bowman?

16 MR. BOWMAN: It's a Government Exhibit 177-27, Your
17 Honor.

18 THE COURT: The question is, is it in evidence?

19 MR. BOWMAN: Yes. Yes.

20 THE COURT: It's important if the jury's going to
21 see it whether it's in evidence.

22 (Exhibit published.)

23 Q Are you able to read the names on the left side of the
24 exhibit?

25 A Yes.

VOULGARIS - Cross - BOWMAN
PROCEEDINGS

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1 Q Can you see the name Joseph Salvani?

2 A Yes.

3 Q Now, going across to the column where it says
4 "freely-tradeable stock," can you tell us what Government
5 Exhibit 177-27 says with respect to the freely-tradeable stock
6 of Joe Salvani? How many shares did he have?

7 A I'm sorry, are we talking about the highlighted in the
8 yellow?

9 Q Look at the top, you'll see pre-trade, pre-split.

10 A Okay.

11 Q Okay?

12 A Yes.

13 Q Go down in that column to find Joseph Salvani.

14 A Correct.

15 Q And how many freely-tradeable shares did he have?

16 A 312,500.

17 Q And how many post-split free-trade shares?

18 A 2.5 million.

19 Q Now do you know what Mr. Salvani received that
20 freely-tradable stock for?

21 A I don't recall.

22 Q Did you ever know?

23 A Possibly. I don't know at this time.

24 Q Did you ever interview Mr. Salvani?

25 A Not that I recall.

VOULGARIS - Cross - BOWMAN
PROCEEDINGS

3025

1 Q Do you know whether any of your other agents working on
2 this case ever interviewed Joseph Salvani?

3 A Not that I recall.

4 Q Did you know that Mr. Discala, AJ and his family,
5 invested in these companies?

6 A Which companies?

7 Q CodeSmart, StarStream, TSGL, and Cubed.

8 A Yes.

9 Q And how did you know that?

10 A Various bank analysis that we've done.

11 Q So as you sit here today, you are not able to tell us
12 whether with respect to StarStream and TSGL he ever profited
13 from his own trading in those companies?

14 A I can't recall.

15 MR. BINI: Objection. Asked and answered.

16 Q And with respect to Cubed --

17 THE COURT: I'm going to overrule the objection, but
18 that's the last time you are going to ask that question.

19 Q With respect to Cubed, do you know what profit
20 Mr. Discala made from his own trading in Cubed?

21 A I don't know right now exactly. If you present me with
22 any kind of analysis or a document.

23 Q Well, I'm asking you as the case agent --

24 THE COURT: He doesn't recall, Mr. Bowman.

25 MR. BOWMAN: Very well, Your Honor.

VOULGARIS - CROSS - RIOPELLE

3026

1 Thank you very much. That's all I have.

2 THE COURT: All right.

3 Any cross for Ms. Cane?

4 MR. RIOPELLE: Yes, Your Honor.

5 THE COURT: Mr. Riopelle.

6 MR. RIOPELLE: Yes, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. RIOPELLE:

9 Q Good morning, Special Agent Voulgaris.

10 A Good morning, sir.

11 Q My name is Roland Riopelle and I represent defendant
12 Kyleen Cane. I've got some questions for you this morning.

13 If I understood your testimony correctly, during the
14 time you worked on this case, the one about which you're
15 testifying this morning, you worked in what's called unit C1
16 at the FBI?

17 A That's correct.

18 Q And that is a unit that specializes in investigations of
19 the type you've described here relating to the financial
20 industry, correct?

21 A Correct.

22 Q And there are times when your -- there are times when
23 unit C1 coordinates its investigations with other government
24 agencies that also look at the financial industry, correct?

25 A What do you mean by "coordinate," sir?

VOULGARIS - CROSS - RIOPELLE

3027

1 Q It's a little sloppy.

2 I think you did testify that there was a time when
3 you went to the Securities and Exchange Commission, correct?

4 A Yes, sir.

5 Q And the Securities and Exchange Commission is another
6 government agency, not the FBI, correct?

7 A That's correct.

8 Q They're called the SEC, right?

9 A Yes.

10 Q And they also investigate the financial industry from
11 time to time, correct?

12 A Yes.

13 Q And there are times when indeed the FBI goes to the SEC
14 and gathers information from them, correct?

15 A Yes.

16 Q And the same is true of an organization called FINRA,
17 F-I-N-R-A, correct?

18 A Yes.

19 Q FINRA is another agency that investigates certain aspects
20 of the financial industry from time to time, correct?

21 A I'm not certain if FINRA is actually a federal agency or
22 is a privately-held entity.

23 Q Right, it's actually a -- I think we heard from somebody
24 at FINRA during the case that it's not actually -- the witness
25 testified it's not a government agency, but it's a

1 self-regulatory body, correct?

2 A I believe so, yes.

3 Q And there are times when FINRA has information that is of
4 interest to the FBI, correct?

5 A Yes.

6 Q And so there are times, in fact, when the FBI goes to
7 FINRA and obtains information from it, correct?

8 A That's correct.

9 Q Now, if I understood you correctly, during your direct
10 examination, you told us that indeed in connection with this
11 case, you and perhaps other agents from C1, spoke to the
12 FBI -- or to the SEC about it, correct?

13 A Yes.

14 Q And you obtained records from the SEC relating to this
15 case, correct?

16 A Yes.

17 Q And did you obtain records that related to some of the
18 subjects of your investigation?

19 A From what I can recall, yes.

20 Q And isn't it a fact, sir, that after that exchange of
21 information with the SEC, you learned that my client had never
22 been the subject of any professional discipline by the SEC?

23 MR. BINI: Objection, Your Honor.

24 THE COURT: I'm going to allow it.

25 Q Did you find that my client, since we're doing findings,

VOULGARIS - CROSS - RIOPELLE

3029

1 did you find that my client had never been disciplined by the
2 Securities and Exchange Commission?

3 A I don't recall.

4 Q You have no recollection then of any discipline being
5 imposed on my client as an attorney who regularly practiced
6 before the SEC; isn't that a fact?

7 A That's correct, I don't recall.

8 Q Now this entity, FINRA, that we testified about, they
9 have -- they create something called a CRD; is that right?

10 A Yes.

11 Q And you're familiar, based on your experience as an FBI
12 agent, and you told us about a little bit about experience in
13 the financial field, with that type of document, correct?

14 A Yes.

15 Q Tell us what a CRD is.

16 A CRD, what aspect of it?

17 Q Well, is a CRD, does it describe generally the employment
18 history of a person who is a registered representative?

19 A Correct.

20 Q And can you unpack that a little bit for those of us who
21 are not special agents who worked in C1 and tell us what that
22 means?

23 A Sure.

24 My experience with it is strictly what I recall just
25 on C1. Basically if you know somebody that's a registered

VOULGARIS - CROSS - RIOPELLE

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1 representative or that has traded before, you can go into this
2 check, I think regulated through FINRA, and see their
3 employment history, any complaints or actions against them,
4 other, you know, personal identifiers.

5 Q And so a CRD -- a registered rep, by the way, that is a
6 broker who has passed certain examinations, correct?

7 A Yes.

8 Q Like, for example, a Series 7. That's a sort of
9 introductory one, correct?

10 A Yes.

11 Q Right. And if you pass your Series 7 examination, you
12 can then go work at a brokerage house, correct?

13 A You could work in a brokerage house in another capacity.

14 Q Right, but you can't work as a broker without passing
15 your Series 7?

16 A Correct.

17 Q Thank you for correcting me.

18 And once you do that and you become a registered
19 with that brokerage house, a CRD is then created, correct?

20 A I believe so.

21 Q Right, and then that lists your employment history for
22 the rest of the time that you work in the financial industry,
23 right?

24 A As long as your licenses don't lapse.

25 Q Okay. And it also lists any disciplinary issues the

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1 particular broker might have, correct?

2 A Yes.

3 Q And FINRA makes these CRDs available to the general
4 public, correct?

5 A I'm not certain. I believe you need a special log in.

6 Q Well, do you know that any member of the general public
7 can go into the FINRA database and go into what's called
8 BrokerCheck and look at the CRD?

9 A I never did that myself.

10 Q As a special agent on C1 you never did that?

11 A No. I've asked other support employees that we've had on
12 our squad do that for me.

13 Q Okay. So other support employees would have obtained
14 CRDs. And you're telling us you don't know how they went
15 about that?

16 A I believe they went to website and logged in using their
17 log-in information and their password and conducted a check.

18 Q But you don't know if members of the general public,
19 ordinary mortals like Roland Riopelle, can do that?

20 A I'm not certain. I wasn't aware.

21 Q Okay. And did you obtain any CRDs in this case?

22 A Yes.

23 Q Because, in fact, there were some of the subjects of your
24 investigation who were, in fact, registered representatives,
25 correct?

1 A That's correct.

2 Q And they had CRDs that related to them, right?

3 A Yes.

4 Q And that would include, just an example, someone like
5 Craig Josephberg, who we heard on tape earlier today, correct?

6 A Yes.

7 Q He had a CRD, right?

8 A Yes.

9 Q Now, do you recall that at the outset of your testimony,
10 you were asked about your own employment in the financial
11 industry.

12 A Yes.

13 Q And you told the jury that, in fact, you worked in the
14 financial industry for about six years before becoming a
15 special agent with the FBI?

16 A Yes.

17 (Continued on next page.)

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1 (Continuing.)

2 BY MR. RIOPELLE:

3 Q And do you recall that you were asked where you worked
4 primarily?

5 A Primarily, yes.

6 Q Yes. And you responded, if I understood you correctly,
7 that you worked primarily at BNP Paribas and Merrill Lynch,
8 correct?

9 A Yes, uh-huh.

10 Q And by the way, sir, there was a point in time when you
11 passed the Series 7 examination, correct?

12 A Yes.

13 Q And a Series 24, what is that?

14 A I didn't receive a 24, sir.

15 Q Oh, you didn't. Okay. But you did pass a Series 7.

16 A Yes.

17 Q And that's the sort of entry-level examination --

18 A Yes.

19 Q -- to become a registered representative, correct?

20 A Yes.

21 Q And you went to work at BNP Paribas, correct?

22 A Yes.

23 Q And you became registered there, right?

24 A Yes.

25 Q And it wouldn't surprise you to learn that there's a CRD

1 available online for someone named Constantine Voulgaris,
2 would it?

3 A I'm sure there is.

4 Q And that CRD -- by the way, what did you do at BNP
5 Paribas?

6 A I started out working in the back office as a consultant
7 through a, I guess, hiring/staffing agency.

8 Q Let's stop there.

9 A Sure.

10 Q And there you were basically making sure trades were
11 properly executed and things like that?

12 What kind of things were you doing in the back
13 office?

14 A More kind of accountant verification. I'm trying to
15 recall, sir; it was quite some time ago. A lot of time going
16 to Secretary of State websites to make sure that certain names
17 were correct on the accounts, you know, their registration
18 hasn't lapsed or things like that.

19 Q Fair to say clerk-type of work?

20 A Yes.

21 Q And over time, you did other work at BNP Paribas?

22 A Yes. I got hired full-time or -- I got hired as a
23 permanent employee. I'm not certain how long I was at the
24 temp agency for.

25 Q Right.

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1 A After I want to say maybe a year, I made the switch to
2 the front office.

3 Q Okay. And in the front office, what were you doing for
4 the front office at BNP Paribas?

5 A I was a client service associate working with the sales
6 and trade desk.

7 Q And what does a client service associate do with the
8 sales desk at BNP Paribas? What did you do?

9 A What I did, so, the sales and traders -- salesmen would
10 bring in clients, traders would book their trades on the
11 client service desk. I, you know, was given a list of
12 clients. Every few weeks or every month or quarterly, we'd
13 get trade requests, and I'd have to plug it into our systems,
14 see if it worked out. Basically, day-to-day manage our
15 clients, but then when it came time for subscription monthly,
16 I'd deal with them a little more closely and pass the trades
17 on to our traders.

18 Q Am I right, again, this was kind of clerk-type of work?

19 A This was not clerk-type of work, no, not on the service
20 desk.

21 Q You were not the sales trader yourself, correct?

22 A Correct, I was not.

23 Q You were supporting the people who were actually working
24 on the sales desk, correct?

25 A Correct.

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1 Q And did you get another promotion from there at some
2 point?

3 A No.

4 Q So, you remained in a support role on the sales desk, the
5 institutional sales desk at BNP Paribas, for the period that
6 you worked there; is that a fair statement?

7 A That is correct.

8 Q Now, is it correct that you worked at BNP Paribas from
9 about June 2005 to about June 2008?

10 A As a permanent employee, I'd have to say I'm not certain
11 about the start date. But then prior to that, again, I was
12 working through a staffing agency there for a considerable
13 amount of time.

14 Sounds correct, though.

15 Q I'm sorry, I didn't mean to cut you off.

16 A It sounds generally correct. Not a hundred percent
17 certain about those dates.

18 Q And am I correct that you left BNP Paribas in about June
19 of 2008?

20 A Around that time, yes.

21 Q And was that a result of the fiscal crisis that was then
22 erupting in the financial industry?

23 A Correct. I was laid off.

24 Q You were laid off from BNP Paribas after working there
25 for about three years in a supporting role, correct?

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1 MR. BINI: Objection, your Honor. Relevance.

2 Q You were a relatively junior employee and you were laid
3 off, correct?

4 THE COURT: We've established that, Mr. Riopelle.
5 Why don't you move on?

6 Q And then you were you unemployed for about six months; is
7 that right?

8 A Yes.

9 Q And it was then that you got your job at Merrill Lynch
10 that was one of your primary jobs in the financial industry,
11 correct?

12 A Yes.

13 Q And that was then in about December of 2008, wasn't it?

14 A Yes.

15 Q And what job did you have at Merrill Lynch in December of
16 2008?

17 A The title I'm not certain about, but I was brought in to
18 work with retail clients on the brokerage side.

19 Q And was that as a junior broker type of a person?

20 A Yes.

21 Q And you were trying to open accounts and things like
22 that?

23 A At that time I wasn't trying to open accounts, I was
24 mainly doing -- studying on their products as well as trying
25 to obtain additional licenses.

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1 Q Isn't it a fact that you left Merrill Lynch in or about
2 March of 2009?

3 A Yes.

4 Q So, you lasted at Merrill Lynch for about four months,
5 correct?

6 A I was laid off, correct.

7 Q You were laid off after four months of employment at
8 Merrill Lynch, correct?

9 MR. BINI: Objection, your Honor.

10 THE COURT: Sustained.

11 He just told you that, Mr. Riopelle.

12 Q Now, after being laid off at Merrill Lynch, you went to
13 work for a business called Annuity Funding, correct?

14 A Very briefly, yes.

15 Q You lasted at Annuity Funding for about five months,
16 right?

17 A I wasn't a full-time employee. I was trying to do some
18 consulting work with that company.

19 Q Did you work with them for about five months, sir?

20 A I'd have to say so, yes.

21 Q And would it help you if I showed you the CRD for
22 Constantine Voulgaris?

23 A Sure.

24 MR. RIOPELLE: I'm going to show you what I've
25 marked Kyleen Cane CV-1.

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1 MR. BINI: Can I take a look at it for a second?

2 MR. RIOPELLE: Sure. I have a copy.

3 THE WITNESS: Thank you, sir.

4 MR. RIOPELLE: There you go, Special Agent.

5 Q Having looked at this, does this refresh your
6 recollection that you were at Annuity Funding for about five
7 months?

8 A Which page would you like to direct me to?

9 I see it right here.

10 Q You see it?

11 A I see it, yes.

12 Q Thank you.

13 Is that correct?

14 THE COURT: Does that refresh your recollection?

15 THE WITNESS: Yes, it does.

16 Q Can you tell us, sir, what kind of business Annuity
17 Funding was?

18 A They tried -- I believe their manifest was to provide
19 small businesses with short-term funding solutions.

20 Q Annuity Funding was what's known as a "hard money" type
21 lender, correct?

22 A I'm not familiar with the term.

23 Q Annuity Funding was a business that made loans to people
24 who couldn't get loans from banks, right?

25 A Yes.

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1 Q And Annuity Funding was a business that charged an
2 interest rate higher than that charged by your typical
3 commercial bank, correct?

4 A Yes.

5 Q Because those loans were regarded by Annuity Funding as
6 somewhat risky, right?

7 A Yes.

8 Q And you were there for a little longer than you worked at
9 Merrill Lynch, correct?

10 A Yes.

11 Q But you didn't tell us about Annuity Funding when you
12 told us about what your primary work in the financial industry
13 was, did you?

14 MR. BINI: Objection, relevance.

15 THE COURT: Sustained.

16 Q And after Annuity Funding, you went to work at a place
17 called David Lerner Associates, right?

18 A That's correct.

19 Q And David Lerner Associates is a brokerage out on Long
20 Island, correct?

21 A I believe they have multiple locations.

22 Q Did you work at the one on Long Island or the one in
23 Teaneck, New Jersey?

24 A I was hired at the one in Teaneck, New Jersey, but I went
25 for onboarding for two days. I didn't actually work there.

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1 Q You didn't actually work there.

2 A I went to the onboarding maybe a week.

3 Q Why didn't you actually work there?

4 A I was pursuing other potential employment opportunities.

5 Q You never actually worked at David Lerner Associates?

6 A I did, I was hired there; I resigned shortly after
7 onboarding.

8 Q And what did you go to do after David Lerner Associates?

9 A I worked at a company called Financial Tracking
10 Technologies.

11 Q And what did Financial Tracking Technologies do?

12 A Financial Tracking Technologies was a company that --
13 they assisted other entities track to find benefits or to find
14 contribution claims through their systems electronically.

15 Q How long did you work at that firm?

16 A Approximately a year, maybe just shy of a year.

17 Q And it was after that that you went to work with the
18 Federal Bureau of Investigation?

19 A Correct.

20 Q And you didn't tell us about that firm when you told us
21 about your primary employment in the financial industry,
22 correct?

23 MR. BINI: Objection, your Honor.

24 THE COURT: Sustained.

25 Q It's fair to say you worked at that firm considerably

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1 longer than you worked at Merrill Lynch, isn't it?

2 A Yes.

3 Q Now, at the time you went to the Securities and Exchange
4 Commission to research the background of persons who were
5 subjects of your investigation, am I correct that you looked
6 into a number of different people?

7 A Yes.

8 Q Did the name Hunter Adams come up during your
9 investigation?

10 A It did.

11 Q And at the time you went to the Securities and Exchange
12 Commission, did you ask them if they had information about
13 Hunter Adams?

14 A I don't recall. I do remember the name in the course of
15 the investigation; I don't recall if I asked the SEC regarding
16 Hunter Adams.

17 Q Did you look into Hunter Adams or do you have a
18 recollection of that?

19 A I'm not sure how in depth we did. Again, I recall the
20 name.

21 Q Did you learn during your investigation that Mr. Adams
22 had a prior conviction for securities fraud?

23 A I don't recall right now.

24 Q Did you learn during your investigation that he
25 physically threatened Marc Wexler?

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1 A I don't recall. If there's a document that I can refresh
2 my recollection...

3 Q Sure. Let me show you what's been marked Government
4 Exhibit 3500-MW-3.

5 A Thank you.

6 Q It's a relatively long document, but if you look at Page
7 9, that's where I'd like to direct your attention.

8 Have you had a chance to review that.

9 A The third paragraph, yes, I did.

10 Q By the way, this is a report written by Special Agent
11 Braconi?

12 A Correct.

13 Q And Special Agent Braconi was your partner in C-1 right?

14 A Yes.

15 Q Because each special agent has a partner. That's the way
16 it works, isn't it?

17 A No.

18 Q But he was your partner?

19 A For this investigation.

20 Q For this investigation, correct?

21 A Correct.

22 Q So, having read this report, does it refresh your
23 recollection that you learned during your investigation that
24 Mr. Adams physically threatened Marc Wexler?

25 A I'm sure I reviewed this and learned about it. Seeing

1 this refreshes my recollection of Hunter Adams. I don't
2 recall that specific line, but I'm sure I reviewed this
3 before.

4 Q Did you learn that by virtue of this physical threat
5 Mr. Adams effectively extorted money from Mr. Wexler and the
6 other shareholders in Cubed?

7 A The report says that Wexler and Discala gave Adams his
8 investment back.

9 Q And do you know whether other investors got their entire
10 investment back in Cubed or was it just Mr. Adams?

11 A This says Mr. Adams received his money back and that
12 potentially he had his investment in his sister-in-law's name.

13 Q And, so, did you, when you got information like this,
14 investigate Mr. Adams further?

15 A I don't recall.

16 Q Let me ask you this: Was Mr. Adams some kind of
17 informant for you in this investigation?

18 A For me, personally? No.

19 Q For the FBI, to your knowledge?

20 A To my knowledge, no.

21 Q So, you just never looked into this conduct; is that
22 right?

23 A I don't recall if we looked into it any further than
24 this.

25 Q You did nothing about a physical threat to one of your

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1 witnesses; is that your testimony?

2 A I don't recall. I didn't do anything.

3 Q Now, do you recall that the Securities and Exchange
4 Commission brought a civil complaint at the time that the FBI
5 arrested the Defendants in your case?

6 A Yes.

7 Q And do you recall that --

8 MR. BINI: Objection, your Honor. Request for
9 sidebar.

10 THE COURT: Sure.

11

12 (Continued on the next page.)

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SIDEBAR

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1 (The following occurred at sidebar.)

2 MR. BINI: Your Honor, the Government objects to
3 this line of questioning because I believe that Cane counsel
4 is going to the SEC complaint, which does not include
5 Ms. Cane. And, of course, we're not permitted to share
6 wiretaps with the SEC. And, in any event, this is not an
7 incident where he can take advantage of Rule 408 to put in
8 evidence regarding a parallel investigation in this case.

9 So, the Government objects to this line of
10 questioning as both hearsay from the SEC, A; B, on 403 grounds
11 as confusing to the jury and irrelevant.

12 MR. RIOPELLE: Your Honor, it is a fact that my
13 client was not named in the SEC complaint. I think this
14 witness has indicated that he and the FBI did share
15 information with the SEC. The SEC, of course, has a much
16 lower burden of proof to file a complaint than the Government
17 has here, so I don't see that there's any harm in pointing out
18 that the SEC never charged my client with anything.

19 THE COURT: It's out on 403 grounds.

20 MR. RIOPELLE: Thank you, your Honor.

21

22 (Continued on next page.)

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1 (Sidebar ends; in open court.)

2 THE COURT: Mr. Riopelle.

3 MR. RIOPELLE: Yes.

4 BY MR. RIOPELLE:

5 Q Special Agent Voulgaris, I believe you told us that you
6 and the other agents of the Federal Bureau of Investigation
7 interviewed a number of the subjects of your investigation;
8 correct?

9 A Yes.

10 Q You also interviewed some of the persons you thought were
11 victims of the conduct that you were investigating, correct?

12 A Yes.

13 Q And you also interviewed persons who you regarded as
14 simply witnesses to material events, correct?

15 A Yes.

16 Q You mentioned a person named George Castillo during your
17 direct examination; do you recall that?

18 A Yes.

19 Q And that was a name of significance to you in your
20 investigation, correct?

21 A Yes.

22 Q Mr. Castillo was the broker at Glendale Securities,
23 correct?

24 A Yeah, he was a broker at Glendale.

25 Q And he, in fact, was the broker for an account of David

1 Ben-Bassat; am I correct?

2 A Correct.

3 Q And Mr. Castillo was interviewed by the FBI; is that
4 correct?

5 A He was.

6 Q And there was a report written by the FBI in connection
7 with that interview, correct?

8 A There was.

9 Q And am I correct that there was no follow-up interview
10 that you're aware of with Mr. Castillo?

11 THE COURT: Subsequent to the report.

12 MR. RIOPELLE: Subsequent to the report, yes.

13 A Not that I can recall.

14 Q Now, I think you told us that, in fact -- let me see what
15 we have here.

16 I think we looked at in your direct exam some text
17 messages between my client and George Castillo; do you recall
18 those?

19 A Yes.

20 Q And you had those text messages at the time you
21 interviewed Mr. Castillo, correct?

22 A I don't recall. If you could show me the date of the
23 interview and...

24 Q Sure. Let me show you what's been marked for
25 identification as Government 35-HS-1.

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1 MR. RIOPELLE: May I approach the witness, your
2 Honor?

3 THE COURT: You may.

4 MR. RIOPELLE: Forgot to ask the last time. Sorry
5 about that.

6 Q Having reviewed this report, does it refresh your
7 recollection that the interview of Mr. Castillo occurred in
8 October of 2014?

9 A Yes.

10 Q By that time, you had -- the FBI had, I should say,
11 arrested my client, Kyleen Cane, correct?

12 A Yes.

13 Q And at that point, at the time of her arrest, the agents
14 arresting her seized her cell phone; am I right?

15 A Yes.

16 Q And a search warrant was obtained for her cell phone,
17 correct?

18 A That's correct.

19 Q And that's how the FBI got the text messages from her
20 phone, correct?

21 A Yes.

22 Q So, by this point, October of 2014, it's correct to say,
23 is it not, that the FBI had in its possession the text
24 messages between my client and Mr. Castillo?

25 A I can't say with certainty that they were extracted from

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1 the phone yet, that the phone was imaged at that point, but we
2 did have the phone in our possession.

3 Q You did have the phone in your possession.

4 A Correct.

5 Q And is it correct to say that during your investigation,
6 the FBI's investigation, I should say, the FBI obtained
7 records relating to the Ben-Bassat account at Glendale
8 Securities?

9 A Yes.

10 Q And is it correct to say that the records that had been
11 obtained were in the FBI's possession when they had an
12 opportunity to interview, and they did interview,
13 Mr. Castillo?

14 A Yes.

15 Q And by the way, I don't remember if we saw this on your
16 direct exam, but you know, do you not, that among the records
17 at Glendale Securities is a trading authorization by which
18 Mr. Ben-Bassat gives my client, Ms. Cane, authorization to
19 place trades in his account at Glendale Securities?

20 A I did review that document, yes.

21 Q Okay. And just so we're clear, that document is a
22 standard type of document, I want to say, in the securities
23 industry. This does happen, correct?

24 A I believe it does. I'm not certain if this is the
25 standard document or --

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1 Q Right, you don't know what the form is, but it is correct
2 to say, is it not, that it is not unusual for a person with a
3 securities account to give another person the authorization to
4 enter trades in that account?

5 A I'm not certain how common it is.

6 Q But it does happen, correct?

7 A I believe so, yes.

8 Q And this is not the only time in the history of the
9 securities industry it's ever happened, correct?

10 A I wouldn't say so, yes.

11 Q And there's nothing, by the way, illegal in one person
12 giving another person the authority to trade in their account?

13 A As long as it's documented properly.

14 Q And you have no reason to believe that the document in
15 this case was an improper documentation.

16 A I don't believe so.

17 Q Now, among the items that we have seen in evidence --

18 MR. RIOPELLE: Could we have the Elmo on,
19 Mr. Villanueva?

20 Thank you. I'm going to use the Elmo so we can
21 speed through this a little bit.

22 Q Government Exhibit 149-4 in evidence, do you see this
23 item here, Special Agent Voulgaris?

24 (Exhibit published to the jury.)

25 A Yes.

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1 Q The top document here is something called a "trade
2 confirmation;" is that right?

3 A Yes.

4 Q And based on your experience working in the securities
5 industry and your experience in Squad C-1, you know what a
6 trade confirmation is, correct?

7 A Yes.

8 Q Tell us what a trade confirmation is?

9 A Generally, it's just a receipt of a securities
10 transaction.

11 Q And it tells the owner of the account what trade was
12 executed in his or her account, correct?

13 A That's correct.

14 Q And, indeed, these confirmations are required to be sent
15 out within a certain period of time from the trade, correct?

16 A I'm not certain about that.

17 Q But you will concede that this does give the owner of the
18 account notice of what's going on in his account, correct?

19 A Yes.

20 Q And do you understand, based on your experience, that
21 typically the confirm might come before the month end
22 statement, correct, or do you know that?

23 A I can't say for certain.

24 Q Now I'm just looking at the top trade here. This
25 describes the order at issue.

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1 And when we say an "order," what are we referring
2 to, you and I?

3 A A trade.

4 Q The trade. Somebody has to order a trade, right?

5 A Yes.

6 Q And there are many different kinds of orders, but one way
7 that an order can -- it's either solicited or unsolicited.
8 That's one characteristic of an order or a trade; correct?

9 A That's correct.

10 Q And a broker, do you know that brokers are required to
11 mark on their paperwork whether an order is solicited or not
12 solicited?

13 A I believe they do.

14 Q And the idea there is that a solicited order is one that
15 the broker is proposing to the client, correct?

16 A Yes.

17 Q And an unsolicited order is one that the client is asking
18 the broker to execute, correct?

19 A Yes.

20 Q And, so, on this one we see it's an unsolicited order,
21 correct?

22 A Yes.

23 Q And what that tells us is that the order has originated
24 with the client, correct?

25 A Yes.

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1 Q And do you know as you sit here whether all of the orders
2 relating to Cubed in the Ben-Bassat account are unsolicited?

3 A I don't know if I can look through the trading records.

4 Q Let me show you Government Exhibit 149-4 and just ask you
5 to flip through quickly -- it won't take you that long -- and
6 tell me whether all the orders are unsolicited.

7 A Thank you.

8 THE COURT: Mr. Riopelle, while he's doing that, can
9 you give me a ballpark of how long you have?

10 MR. RIOPELLE: I probably have a good 'nother
11 half-hour to an hour, depending on how it goes, Judge.

12 THE COURT: Then we'll do after this question --

13 MR. RIOPELLE: Take our break.

14 THE COURT: Yes.

15 MR. RIOPELLE: Perfect.

16 THE COURT: Or do you have more questions with
17 respect to this document?

18 MR. RIOPELLE: Yes, I have a fairly long continuing
19 exam in this line, but this is a good place to break.

20 THE COURT: After the answer to the pending
21 question.

22 MR. RIOPELLE: Yes, he'll tell us whether the orders
23 are unsolicited or not, if he doesn't die of paper cuts
24 before.

25 Q You've had a chance to look at them all?

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1 A Yes, I did.

2 Q Am I correct that each of these orders is an unsolicited
3 order?

4 A Yes.

5 Q Just to tie it off, what that means is that the orders,
6 each of these orders, originated with the customer who asked
7 the broker to execute the order in a certain way rather than a
8 solicited order, which is the broker coming up with an idea
9 and pitching it to the client.

10 A That's correct.

11 MR. RIOPELLE: Judge, this might be a good time.

12 THE COURT: Sounds like a plan, Mr. Riopelle.

13 Ladies and gentlemen, we'll take our first for break
14 of the day. The usual recess rules apply. Don't discuss the
15 case amongst yourselves or with anyone else you may run into
16 in the back. Continue to keep an open mind.

17 Come back in about 15 minutes or so.

18 (Jury exits.)

19 THE COURT: Special Agent, you may step down.

20 We'll see you in about 15.

21 MR. BINI: Thank you, your Honor.

22 MR. RIOPELLE: Thank you, Judge.

23 (Recess taken.)

24 THE COURT: Court is back in session. All counsel
25 are present as well as the Defendants.

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1 Are you ready, Mr. Riopelle?

2 MR. RIOPELLE: I just need the witness, Judge.

3 (Witness resumes the stand.)

4 (Jury enters.)

5 THE COURT: Be seated, please.

6 Counsel will stipulate that the jury is present and
7 properly seated?

8 MS. JONES: Yes, your Honor.

9 MR. ROSS: Yes, Judge.

10 MR. RIOPELLE: Yes, Judge.

11 THE COURT: Thank you, counsel.

12 Welcome back, ladies and gentlemen. Special Agent
13 Voulgaris is back on the stand and Mr. Riopelle will continue
14 his cross-examination.

15 MR. RIOPELLE: Thank you, your Honor. May I
16 inquire?

17 THE COURT: You may.

18 BY MR. RIOPELLE:

19 Q Special Agent Voulgaris, before we broke we were talking
20 about orders for securities and how some orders are solicited
21 and some orders are unsolicited; do you remember that
22 testimony?

23 A Yes.

24 Q Is it correct that there are other ways -- that there's
25 something called a "limit order"? Let me just cut right to

1 the chase.

2 A Yes.

3 Q And a limit order is an order given to a broker that
4 limits the broker's discretion in executing the order; is that
5 a fair statement?

6 A I'm not certain right off the top of my head.

7 Q Do you understand, a limit order is fairly common in the
8 securities industry; is it not?

9 A Again, "common," depends what kind of product you're
10 dealing with. I don't know how common it would be.

11 Q How about trading an ordinary stock, fairly common in
12 that context?

13 A I believe so.

14 Q Now, a limit order can be limited in terms of the price
15 of execution, correct?

16 A Again, off the top of my head, I can't recall, but, yeah,
17 you would set certain parameters.

18 Q And that's all I'm trying to get at, that if a customer
19 gave his or her broker a limit order they might tell the
20 broker don't sell below a certain price, correct?

21 THE COURT: Can a customer do that?

22 Q Can a customer do that?

23 A I believe so.

24 Q In fact, it is commonly done; is it not?

25 A Again, I don't know how common, but I'll...

Voulgaris - Cross - Riopelle

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1 Q Would it be fair to say that it happens every day in the
2 securities industry?

3 A I'm sure it does.

4 Q And another way that an order might be limited would be
5 as to time, correct?

6 Sell today or don't sell, correct?

7 A Yes.

8 Q Now, there are also something called "market orders,"
9 right?

10 A Yes.

11 Q And that's when you call -- the customer calls the broker
12 and says, Just sell at whatever price the market is at,
13 correct?

14 A I believe so, yes.

15 Q Now, we saw that the orders in Government Exhibit
16 149-4 -- those are those trade confirmations -- were all
17 unsolicited orders, correct?

18 A Yes.

19 Q And I think we established that unsolicited orders are
20 those orders that are communicated to a broker by the
21 customer, correct?

22 A Yes.

23 Q And is there such a thing as a "standing" order?

24 A Possibly. I'm not familiar with the term.

25 Q Well, it's not uncommon, is it, for a customer to give

Voulgaris - Cross - Riopelle

3059

1 instructions to a broker that remain in place over time?

2 A I'm not familiar with a standing order. I don't know if
3 it's common or not.

4 Q You've never heard of, despite your experience in the
5 securities industry, an order, for example, to, Sell these
6 shares at the best price you can get in the market over time.

7 A I guess it's possible.

8 Q I'm not asking to you guess. You worked on a sales desk,
9 right?

10 A It was a different product line.

11 Q Okay.

12 A I wouldn't deal with those kind of orders.

13 Q You didn't deal with those kind of orders.

14 You worked at Merrill Lynch for three months. Do
15 you remember ever dealing with an order like that at Merrill
16 Lynch, one that stayed open over time?

17 A Again, I didn't deal with clients at Merrill Lynch .

18 Q You do know based on your investigation that the trades
19 executed in the Ben-Bassat account were all executed over \$5.
20 You know that, don't you?

21 A Yes.

22 Q And you know from your investigation that those trades
23 were executed over a couple of months of time, correct?

24 A Correct.

25 Q Primarily, May and June of 2014, correct?

LAM

OCR

RPR

Voulgaris - Cross - Riopelle

3060

1 A April through June.

2 Q End of April through June, how about that?

3 A Okay.

4 Q And you know from your investigation that there were few
5 communications between Mr. Ben-Bassat and the broker at
6 Glendale, correct?

7 A There was some, I don't what you determine a "few" is.

8 Q There were some.

9 Is it fair to say, having now looked at -- and you
10 know there were a lot of orders in the account, correct?

11 A Yes.

12 Q Is it fair to say, based on your recollection of the
13 investigation that you conducted, that there was not a
14 communication between Mr. Ben-Bassat and Mr. Castillo every
15 time one of these orders was executed?

16 A The best I can recall, not every time.

17 Q In fact -- I don't think I have it.

18 Do you recall that there was a chart prepared that
19 showed the communications between Mr. Ben-Bassat and
20 Mr. Castillo?

21 Did you ever see that chart?

22 A I don't think I did.

23 Q Now, you did have my client's cell phone, correct?

24 A Yes.

25 Q And you did -- the FBI, not you personally, the FBI,

Voulgaris - Cross - Riopelle

3061

1 those guys in the IT unit or whatever they are, they extracted
2 from my client's cell phone certain text messages, correct?

3 A They imaged the phone.

4 Q And ultimately obtained messages from my client's phone?

5 A As part of the image, yes.

6 Q As part of the image.

7 And some of those text messages were communications
8 between my client and Mr. Castillo, correct?

9 A Yes.

10 Q But it is correct to say, is it not, that those text
11 messages do not account for all these orders; is that right?

12 A Correct.

13 Q There are a limited number of text messages as compared
14 to the large number of orders, correct?

15 A Yes.

16 Q And am I correct that during your investigation the FBI
17 obtained phone records relating to my client?

18 A I believe so, yes.

19 Q And I take it that you or other persons of the FBI would
20 analyze those phone records.

21 A Yes.

22 Q Do you recall, as you sit here now, the fact that those
23 phone records do not show a phone call from my client to
24 Mr. Castillo in connection with each one of these orders?

25 A I don't recall. I don't know if I even saw the raw

Voulgaris - Cross - Riopelle

3062

1 records. I've seen the analysis, I'm sure.

2 Q So, as you sit here today, it's fair to say, to tie off
3 this line of inquiry, that you are not aware of a contact
4 between either Mr. Ben-Bassat or my client with Mr. Castillo
5 before each one of these orders was executed?

6 A I can't say for certain.

7 Q Right. And, therefore, it's true, isn't it, that these
8 confirms that we have in Government Exhibit 149-4 are
9 consistent with the notion of a single order at the beginning
10 of the trading activity which was then executed over time by
11 Mr. Castillo?

12 That's an explanation for the evidence that you
13 found in your investigation; is it not?

14 A I didn't come to that conclusion.

15 Q Pardon?

16 A I didn't come to that conclusion.

17 Q You didn't come to that conclusion despite the fact that
18 you were unable to find a phone call from my client to
19 Mr. Castillo or a text from my client to Mr. Castillo in
20 connection with each one of these orders, correct?

21 A I would have to review the toll records to do the actual
22 analysis right now to see if there's communication, whether it
23 be voice communication or text communication, to Mr. Castillo.

24 Q As you sit here now, you're not aware of such
25 communication?

LAM

OCR

RPR

Voulgaris - Cross - Riopelle

3063

1 A I don't recall.

2 Q You'd have to go back and look again at the results of
3 your investigation, correct?

4 A Correct.

5 Q Isn't it a fact, sir, that these confirmations are
6 consistent with a standing order to sell shares above \$5?

7 A Again, I'm not familiar with what a standing order is. I
8 never worked with that.

9 Q Now, we did see some texts during your direct examination
10 and we have seen some during the trial. I'd like to show
11 you --

12 By the way, one last thing. In Mr. Ben-Bassat's
13 account at Glendale in Cubed, is it correct, sir, that
14 Mr. Ben-Bassat did not buy any shares of Cubed during the time
15 period that his account was actively trading those shares?

16 A He was selling shares.

17 Q He was only selling, correct?

18 A Yes.

19 Q Thank you.

20 Now I'd like to show you Government Exhibit 129-105,
21 which I believe is in evidence. And you may have even looked
22 at it during your direct exam.

23 (Exhibit published to the jury.)

24 Q These, I believe, are texts --

25 MR. BINI: That was not admitted. Objection.

Voulgaris - Cross - Riopelle

3064

1 MR. RIOPELLE: I'll take it off. Sorry about that.

2 Q Do you recall, as you sit here now, that there were text
3 messages from Mr. Discala to my client requesting that she
4 order Mr. Castillo to buy stock in Cubed?

5 A I don't recall. I'd have to see some kind of record.

6 Q Let me show you what's been marked Government Exhibit
7 129-05 for identification.

8 Have you had a chance to review that?

9 A Yes.

10 Q Does that refresh your recollection that there were
11 occasions when Mr. Discala asked my client to instruct
12 Mr. Castillo to buy shares of Cubed?

13 A I don't recall putting my eyes on this before --
14 potentially, I did -- but, yes, it shows that Mr. Discala is
15 requesting Ms. Cane to purchase.

16 Q And, in fact, we know from your testimony just a moment
17 ago that didn't happen, right?

18 A Correct.

19 Q Ms. Cane, to use the vernacular, shined Mr. Discala on
20 that one, correct?

21 MR. BOWMAN: Objection, your Honor.

22 Q Ms. Cane did not execute the order requested by
23 Mr. Discala, correct?

24 A I don't know if there was direction given to George to
25 execute the order. George would be doing the execution.

LAM

OCR

RPR

Voulgaris - Cross - Riopelle

3065

1 Q But you know that the request was not to execute the
2 order at a specific price, was it?

3 A Are you talking about this specific instruction?

4 Q Yes, sir.

5 That's simply a buy, isn't it?

6 A Correct. There's no price stated.

7 Q If Mr. Castillo got that order, it's an order to buy at
8 market, correct?

9 A I would have to see what -- determine exactly what
10 Ms. Cane told Mr. Castillo, if there was communication.

11 Q But in any event, the findings of your investigation were
12 that Mr. Castillo never bought a share of Cubed in the
13 Ben-Bassat account; isn't that correct, sir?

14 A As far as I can recall, yes.

15 MR. RIOPELLE: Now I'm going to ask for some help
16 from my colleagues at the Government table. Is this exhibit,
17 129-59, in evidence?

18 PARALEGAL ISHITANI: Yes.

19 MR. RIOPELLE: Henry says yes. We have a definitive
20 ruling. This one is in evidence.

21 (Exhibit published to the jury.)

22 Q I'd like to show you what's Government 125-59, and this
23 one is in evidence. And I don't recall as I sit here or stand
24 here, Special Agent Voulgaris, whether, in fact, you testified
25 about this on your direct exam.

Voulgaris - Cross - Riopelle

3066

1 Do you recognize this to be a text message incoming
2 to my client's phone from Marc Wexler?

3 A Yes.

4 Q And that is a text message from Marc Wexler to my client,
5 asking her to contact Glendale, correct?

6 A Yes.

7 Q And "Glendale" means George Castillo, correct?

8 A I would have to assume, yes.

9 Q And the message reads: Ask him about left.

10 Do you know, based on your investigation, what that
11 refers to?

12 A The "left" would be the bid.

13 Q The bid.

14 And just so we're clear, to make it clear for the
15 jury, a broker or market maker publishes to the market what's
16 called a "bid" and an "ask," correct?

17 A Yes.

18 Q And the "bid" is what you're willing to buy the stock
19 for, correct?

20 A Yes.

21 Q And the "ask" is what you're willing to sell the stock
22 for, correct?

23 A Yes.

24 Q And there's typically what's called a little spread
25 between those?

1 A Correct.

2 Q So, with that in mind, what Mr. Wexler appears to be
3 asking my client to do in this case is to move the price --
4 ask Mr. Castillo to move the price at which he is offering to
5 buy shares of Cubed, correct?

6 A I don't see any reference to asking him to move anything,
7 just asking about "left."

8 Q There's reference to asking Mr. Castillo about his bid to
9 buy shares of Cubed, correct?

10 A From this, I can't infer if it's his bid or just a bid.

11 Q So, in any event, we know that the Ben-Bassat account
12 never did buy shares in Cubed, correct?

13 A Yes.

14 Q During your direct examination, I believe you were shown
15 a series of texts between a gentleman named Joe Laxague and my
16 client, Kyleen Cane; do you remember that?

17 A Yes.

18 Q And those texts related to a company called Northwest
19 Resources; am I right?

20 A Some of them, yes.

21 Q And I just want to review them briefly with you now.

22 (Exhibit published to the jury.)

23 Q This is Government Exhibit 129-92, and it talks about
24 somebody named Jeff Chong and Northwest Remington and
25 Thompson, correct?

Voulgaris - Cross - Riopelle

3068

1 A Yes.

2 Q And Jeff Chong -- and this text, by the way, is in March
3 of 2013, correct?

4 A Yes.

5 Q That is almost a year before my client began working with
6 the company that became Cubed, correct?

7 A Northwest Resources did become Cubed.

8 Q Okay. But how about Crackpot? Crackpot, my client
9 didn't begin to work with Crackpot until early 2014; isn't
10 that right?

11 A I'd have to see the records when they were for certain
12 communicating, but it was at this time.

13 Q In any event, this fellow Jeff Chong he was not a subject
14 of your investigation in the Cubed investigation, correct?

15 A Not that I can recall.

16 Q And in March of 2013, the transaction that ultimately
17 resulted in Cubed had not yet begun, correct?

18 A Correct.

19 Q So, this text doesn't directly have anything to do with
20 Cubed, correct?

21 THE COURT: With Cubed in mind?

22 MR. RIOPELLE: Yes.

23 Q There's no indication that Jeff Chong had anything to do
24 with Cubed. You didn't find that in your investigation.

25 A Not that I can recall.

Voulgaris - Cross - Riopelle

3069

1 Q Let's look at another one.

2 (Exhibit published to the jury.)

3 Q Government Exhibit 129-93, I think you testified a little
4 bit about this one. This is, again --

5 MR. BINI: There was no testimony about that.

6 MR. RIOPELLE: Okay. We'll skip that one.

7 How about 129-94, did we have any testimony on that
8 one?

9 MR. BINI: We did.

10 (Exhibit published to the jury.)

11 Q Let's look at 129-94. This, again, is a series of text
12 messages between Joe Laxague and my client, correct?

13 A Yes.

14 Q And if we look down, there is a reference to Northwest
15 Resources, correct?

16 A Yes.

17 Q And there's talk about potentially selling that company
18 to somebody named Lazar, correct?

19 A Yes.

20 Q And it goes on over there and there's talk about a cost
21 or a sales price of 300,000 for each of the companies
22 mentioned in the texts, correct?

23 A For each -- if you could, scroll it.

24 Q There's Northwest and Thompson there.

25 A Okay, yes.

Voulgaris - Cross - Riopelle

3070

1 Q And you see the last text is 300 each.

2 A Yes.

3 Q And this fellow Lazar, he was -- and these texts are all
4 going on in June of 2013, correct?

5 A Yes.

6 Q And that is long before the transaction begins that is
7 connected to -- that results in the company called Cubed,
8 right?

9 A Right.

10 Q And this fellow Lazar, he is not a subject -- he was not
11 a subject of your investigation in this case, correct?

12 A Not that I can recall.

13 Q And am I correct that these text messages are about
14 trying to sell Northwest Resources long before it was sold in
15 connection with the transaction that resulted in Cubed?

16 A Yeah.

17 Q And there are texts about selling the company to somebody
18 other than a person who was a subject of your investigation
19 insofar as it related to Cubed?

20 A In relation to Lazar and Jeff Chong, yes.

21 Q Thank you. I was just going to go ask, Jeff Chong is the
22 same story, right?

23 A Yes.

24 MR. RIOPELLE: I'm going to rely on the Government.

25 129-95, is that in evidence?

Voulgaris - Cross - Riopelle

3071

1 MR. BINI: Henry says it is.

2 MR. RIOPELLE: If Henry says it's so, it must be so.

3 (Exhibit published to the jury.)

4 Q Agent Voulgaris, I'm showing you what's marked in
5 evidence as Government Exhibit 129-95, another text message
6 between Joe Laxague and my client, in June of 2013. And now
7 there's a question: Should I quote Burton 300 for NWRS too?

8 You recognize NWRS to be Northwest Resources,
9 correct?

10 A That's correct.

11 Q And this is, am I right, another attempt to sell that
12 company, or it sounds like it?

13 A Burton is requesting a quote.

14 Q And Burton, whoever he is, is asking the price for
15 Northwest Resources?

16 A Yes.

17 Q And Mr. Laxague is asking my client, Ms. Cane, What price
18 should I ask for it, correct?

19 A He's asking 300. Same price.

20 Q And we saw that price before.

21 And am I correct that, again, this is in June of
22 2013, before my client is involved in any way in the Cubed
23 transaction?

24 A This is before the Cubed transaction occurred, yes.

25 Q And this fellow Burton, whoever Burton is, he was never a

Voulgaris - Cross - Riopelle

3072

1 subject of your investigation in Cubed, correct?

2 A I can't recall right now.

3 Q So, you don't recall him being the subject of an
4 investigation.

5 A No, I don't recall him.

6 Q He certainly was never a defendant in this case.

7 A That's correct.

8 Q Burton, last name unknown or first name unknown.

9 A Correct.

10 Q All we have for him is "Burton" as we sit here right now.

11 A Yes, sir.

12 MR. RIOPELLE: Henry, how about 129-97?

13 Henry tells me this one is also in evidence. It's
14 Government Exhibit 129-97.

15 (Exhibit published to the jury.)

16 Q And this is, again, a reference to David Lazar. It may
17 be the same Lazar we saw in the earlier text message, correct?

18 Could be.

19 A Could be.

20 Q And this one is now in October of 2013, correct?

21 A Yes.

22 Q And, again, it's talking about David Lazar wanting a
23 price on NWRS, Northwest Resources, correct?

24 A Yes.

25 Q And it appears from this text message that Mr. Laxague is

Voulgaris - Cross - Riopelle

3073

1 letting my client know that someone wants to know what the
2 cost of Northwest Resources is, correct?

3 A Yes.

4 Q And this is going on in October of 2013?

5 A Yes.

6 Q And that, again, is before my client became involved in
7 the transaction that resulted ultimately in Cubed, correct?

8 A I believe it is, yes.

9 Q And this fellow David Lazar was never a subject of your
10 investigation in this case.

11 A No, I don't believe so.

12 Q In fact, at the time of that last text message,
13 October 13, there was a lawyer who was a subject of your
14 investigation named Darren Ofsink, correct?

15 A Yes.

16 Q And Mr. Ofsink was a lawyer who had been involved in a
17 series of transactions prior to the Cubed transaction,
18 correct?

19 A Yes.

20 Q And do you recall that during your investigation you
21 discovered that Mr. Ofsink was, in fact, the lawyer for Cubed
22 at beginning?

23 A I believe so.

24 Q And my client came along sort of halfway through that
25 deal; correct, or partway through it?

LAM

OCR

RPR

Voulgaris - Cross - Riopelle

3074

1 Let's not quibble over "half."

2 A I'd have to see some of the documents or some of the
3 notes. I may have to refresh my recollection on the actual
4 date.

5 Q Okay. Let's take a look at Government Exhibit 182-13 in
6 evidence.

7 (Exhibit published to the jury.)

8 Q Do you remember seeing this document during your
9 investigation?

10 A I can't recall if I saw this exact document, but I can
11 take a look at it now.

12 Q Okay. Well, do you recall seeing --

13 MR. RIOPELLE: May I approach the witness, your
14 Honor?

15 THE COURT: You may.

16 THE WITNESS: Thank you.

17 Q Do you recall, sir, seeing the retainer agreement by
18 which my client was formally retained in the Cubed matter?

19 A I'm not certain I actually saw the retainer agreement.

20 Q So, in your investigation you're not sure you saw this?

21 A At this moment right now. Maybe I did.

22 Q I'm sure you saw quite a few documents during the
23 investigation; is that fair to say?

24 A Correct. It was quite some time ago too.

25 Q As we know from just a few minutes ago, I can't remember

Voulgaris - Cross - Riopelle

3075

1 everything that was admitted in evidence either. So, we're
2 not going to fault anybody for not remembering all the
3 documents. I'd be in trouble.

4 In any event, this Government exhibit is dated
5 March 2014; is that correct?

6 A Yes.

7 Q And you don't dispute that this document appears to be a
8 formal retainer agreement by which Cubed retained or
9 Crackpot -- I forget which it is -- retained my client,
10 Ms. Cane, correct?

11 A Can I look through the document?

12 Q That document is admitted in evidence. So, you don't
13 have any reason to believe that that document is not genuine
14 correct?

15 A No, but I can't say either way. I'd like to look at it
16 to...

17 Q Take your time, take your time.

18 Have you had a chance to look at that?

19 A Yes.

20 Q Does that appear to you to be a formal retainer agreement
21 by which my client was formally retained?

22 A Yes.

23 Q And it is dated in March of 2014, correct?

24 A Yes.

25 Q And you have no reason to think that document is not

1 genuine, correct?

2 A I don't have a reason to believe that.

3 Q And just to tie this off, that document is five or six
4 months after the last text message we looked at in October of
5 2013, correct?

6 A About five months, yes.

7 Q Now I'd like to show you another text message that is in
8 evidence. It's Government Exhibit 129-101.

9 (Exhibit published to the jury.)

10 Q There's three messages there. These are messages
11 exchanged between Mr. Discala and my client, correct?

12 A Yes.

13 Q And the first reads: How are we looking, GP?
14 Correct?

15 A Yes.

16 Q And based on your investigation, you associate "GP" with
17 my client, correct?

18 A Yes.

19 Q And I think we got your understanding. You understand
20 that refers to "guardian princess."

21 A Yes.

22 Q And then the next message is outgoing from my client to
23 Mr. Discala, right?

24 A Yes.

25 Q And that reads: Very good. DTC fixed, name change

Voulgaris - Cross - Riopelle

3077

1 started, split started, Doug moving in as CEO, drafting
2 licensing deal all in motion just as in plan I sent.

3 That was my client's message to Mr. Discala,
4 correct?

5 A Yes.

6 Q And you understand that message to refer to a series of
7 legal things that had to be dealt with; right, like the DTC?

8 You know that's the Depository Trust Company?

9 A In order to trade securities electronically, you deposit
10 with the DTC.

11

12 (Continued on next page.)

13

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C. VOULGARIS - CROSS - MR. RIOPELLE

3078

1 CONTINUED CROSS EXAMINATION

2 BY MR. RIOPELLE:

3 Q And this refers to DTC fixed, so something was done
4 there, right?

5 A I presume.

6 Q Right. And it says, name change started, know there was
7 a name change in the company, correct?

8 A Yes.

9 Q Again, that's a legal thing that lawyers have to fool
10 around with, right?

11 A I assume.

12 Q Okay. And then it says, split started. There was a
13 stock split in this case, correct?

14 A Yes.

15 Q And that again is requires filings with the SEC and
16 places like that, correct?

17 A Yes.

18 Q And that's something a lawyer handles, right?

19 A I don't know if it is required to have an attorney to
20 file it.

21 Q But it has to be a filed, correct?

22 A There has to be a filing.

23 Q The next reference is the Doug moved in as CEO. You
24 recognize that to be a reference to Doug Shinsato, correct?

25 A Yes.

1 Q And Doug Shinsato was a business person, right?

2 A He was the former COO of Crackpot.

3 Q And he -- at any point did you interview Mr. Shinsato?

4 A Not that I can recall. I didn't personally.

5 Q Okay. In any event, so far as you know Mr. Shinsato is a
6 legitimate business person, correct?

7 A I can't make that assumption.

8 Q Did you arrest Mr. Shinsato?

9 A No.

10 Q Mr. Shinsato continued to work with the company that
11 became Cubed from the time of this text until the time of the
12 arrests in this case; is that right?

13 A I don't know the duration of his employment when it
14 ended.

15 Q But you don't have any information that he resigned from
16 Cubed at any point prior to the arrests in this case, do you?

17 A I can't recall.

18 Q You don't have any information to suggest that
19 Mr. Shinsato was some kind of criminal, do you?

20 A I'd have to look at his, any records we have pulled in
21 the past, but I can't recall a criminal history.

22 Q Then there is a reference to drafting a licensing deal.
23 Based on your investigation you understood that there were
24 licensing deals that were done with the company that became
25 Cubed?

C. VOULGARIS - CROSS - MR. RIOPELLE

3080

1 A I don't recall.

2 Q Do you recall a company called Ping Mobile?

3 A Yes.

4 Q And do you recall a company called Wiki Technologies?

5 A Something to that effect, Wiki Technologies, yes.

6 Q Do you recall that there were public filings issued by
7 Cubed or filed by Cubed with the SEC from time to time?

8 A There were filings, yes.

9 Q And do you recall that some of those filings discussed
10 the licensing transactions between Cubed and Ping Mobile and
11 Wiki Technologies and other companies?

12 A I don't recall the licensing aspect of those filings at
13 all.

14 Q Do you recall that those filings disclosed transactions
15 between Cubed and Wiki Technologies and Ping Mobile?

16 A Those specific transactions, I don't recall those.

17 Q Very well. I'm going to show you Government's Exhibit
18 11, which is in evidence. This is what is called an 8K
19 report. You're familiar in general with 8K reports, correct?

20 A Yes.

21 Q And an 8K report is something that a company files when
22 there is a significant event and it wishes to inform its
23 shareholders of that event; is that a fair statement?

24 A Yes.

25 Q And this one relates to change in name from Northwest

C. VOULGARIS - CROSS - MR. RIOPELLE

3081

1 Resources to Cubed?

2 A Yes.

3 Q And by the way, there is nothing -- a company is allowed
4 to change its name if it wishes to, correct?

5 A I believe so.

6 Q And if a public company does that, it has to file an 8K
7 report though, correct?

8 A Yes, I would say so.

9 Q And that's what this report was that we just looked at,
10 Government's Exhibit 11, it's an 8K that described the name
11 change?

12 A Amongst other things, yes.

13 Q And it's in effect telling the shareholders of the
14 company that its name will be Cubed going forward?

15 A I'm not sure that's how they told their shareholders.

16 Q In fact it tells the market that, correct, the public?

17 A Yes if they filed it with the SEC it's a public filing.

18 Q Those filings with the SEC are available to mere mortals
19 like me, correct?

20 A Yes.

21 Q I can go to the Edgar system on the SEC's website and see
22 filings for any company I'd like, correct?

23 A Yes.

24 Q When this one of these filings, like Government's Exhibit
25 11 is done, the company in question is essentially making a

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1 disclosure to the entire market, correct?

2 A They are filing, they are filing that disclosure with the
3 SEC.

4 Q And by doing so, it becomes available to every member of
5 the general public?

6 A Yes.

7 Q Or least anybody with access to the Internet?

8 A I would say so.

9 Q Now do you recall that during your direct examination you
10 gave us some testimony about press releases?

11 A Yes.

12 Q And you testified that you learned in the course of your
13 investigation or you found that there was trading going on
14 that was coordinated with press releases?

15 A Yes.

16 Q And those -- did those findings include the fact that
17 the -- you know who Marc Wexler is, right?

18 A Yes.

19 Q And he was a person who was trading in the stock of
20 Cubed, correct?

21 A Yes.

22 Q And indeed, he was buying and selling in Cubed from time
23 to time, correct?

24 A I would want to see trading records to verify what he was
25 buying or selling.

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1 Q Will you give me at least that he was trading in Cubed?

2 A I believe so, yes.

3 Q Now, did your findings in your investigation include the
4 fact that Mr. Wexler was frustrated with the behavior of my
5 client as it was connected to the press releases relating to
6 Cubed?

7 A Is there communication that you can show me to refresh my
8 recollection?

9 Q Let's look at Government's Exhibit 129-47, which I think
10 is in evidence. Here it is, 129-47, and I'll direct your
11 attention to the top couple of text messages. These are text
12 messages from Mr. Wexler to my client, correct?

13 A Yes.

14 Q And the second one is says 745 nada, correct?

15 A Yes.

16 Q And it's your understanding based on your experience as
17 an FBI agent, that persons who want to trade on press releases
18 want those press releases filed before the market opens?

19 A During the course of this investigation specifically?

20 Q Yes. That's what they want?

21 A In this investigation they wanted premarket.

22 Q Premarket. And for those of us who are not trained
23 securities professionals, premarket means before the market
24 opens, right?

25 A Yes.

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1 Q And the market opens 8:00 o'clock or nine?

2 A Nine.

3 Q And so do you understand that Mr. Wexler is complaining
4 here about the fact that a press release has not been issued
5 that morning?

6 A From this I can't tell what he's complaining about or if
7 he's complaining.

8 Q In any event, his next communication says, we'll call you
9 later. AJ is going ballistic. I'll handle it. Correct?

10 A That's what it says.

11 Q He is reporting to my client, Ms. Cane, frustration or
12 irritation at least on the part of Mr. Discala, correct?

13 A He's saying AJ is going ballistic. I don't know, I don't
14 know what he's going ballistic regarding.

15 Q Let's go to the next page and see if that helps. Do you
16 see that in the text message there at the top of the page
17 Mr. Wexler is asking my client, Ms. Cane, to consider letting
18 him run the press?

19 A That's what he's asking.

20 Q With that text message in mind, does that remind you that
21 Mr. Wexler was often irritated at my client because press
22 releases were not issued in a way that he wanted?

23 A Based on this I can't see if he's irritated or not. He's
24 just answering the question.

25 Q Can I take it over; that's what he's asking?

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1 A Would you guys consider letting me run press. I can't
2 say whether he's frustrated or not based on this.

3 Q You can say he's asking to run the press himself,
4 correct?

5 A Yes.

6 Q He was never allowed to run the press himself, though,
7 was he?

8 A I can't recall if he was or wasn't.

9 Q Your findings in this investigation do not include a
10 finding that Mr. Wexler was allowed to run the press, correct?

11 A No. My findings was that Ms. Cane was coordinating the
12 press releases.

13 Q Right. And if we look down to the bottom, she reports to
14 Mr. Wexler that there is a new agent, somebody named Kirt
15 Darich who's gotten involved, correct?

16 A Yes.

17 Q I'm showing you now Government's Exhibit 129-42. The
18 incoming message on the top is from Mr. Wexler to my client,
19 correct?

20 A Yes.

21 Q And he says, no news today, question mark, wow. Correct?

22 A Yes.

23 Q Does that indicate that Mr. Wexler is frustrated with my
24 client's handling of the press releases?

25 A I would say he's surprised.

1 Q Okay. I'll take surprised. At the bottom he sends
2 another text saying, there is real confusion developing on my
3 end. Do you see that?

4 A Yes.

5 Q And my client responds, okay, talk to you then. And
6 Mr. Wexler say thank you. Correct?

7 A Yes.

8 Q And is it correct to say that after this text message
9 Mr. Wexler was still not given the job or task of running the
10 press for Cubed?

11 A I don't recall him ever running the press for Cubed.

12 Q Now during your testimony we heard a series of phone
13 calls in which Mr. Discala and my client discuss the price of
14 the bid or ask that is being set by George Castillo at
15 Glendale, correct?

16 A They are talking about George and the prices, yes.

17 Q And they are not talking, however, about prices at which
18 George will execute the securities, right, or execute the
19 orders. They are talking about what the bid would be or the
20 ask would be, right?

21 A They are talking about what the price should be set at.

22 Q Right. And we heard earlier that the price is the bid
23 and the ask, correct?

24 A Yes.

25 Q And do you know, as you sit here, whether in fact the

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1 price as discussed in those phone calls were in fact the
2 prices at which trades were executed?

3 A I'd have to look at the records.

4 Q Okay. Now, did you find out during your investigation
5 that Mr. Wexler was also angry at my client and at Glendale
6 because they were not executing trades in a way he wanted?

7 A I don't recall. If you can show me something to refresh
8 my recollection.

9 Q Do you recall that during one of the intercepted phone
10 calls Mr. Wexler said to Mr. Discala, we are supporting Cubed
11 we're not supporting fucking Glendale?

12 A Can you show me the transcript?

13 Q I think I can, yes. I'm going to show you what is marked
14 Government's Exhibit 198-49T.

15 May I approach?

16 THE COURT: You may.

17 Q Referring you to the section that I flagged. Does that
18 refresh your recollection that there were times when Wexler
19 was frustrated with the way in which Glendale was executing
20 its trades?

21 A Would you give me a moment? I'm going to read the page.

22 Q The flag is by the exchange that I quoted.

23 (Witness reviewing document.)

24 A Okay.

25 Q Does that refresh your recollection, sir? There were

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1 times that Mr. Wexler was frustrated that the trading activity
2 at Glendale was not to his liking?

3 A From reading this it shows that he's upset that more
4 trades are not occurring. So Glendale is trading -- Ms. Cane
5 is restricting Glendale from trading every day. It seems like
6 she wants more a steady decline.

7 Q Now, do you recall intercepting or listening to
8 intercepted phone calls between Mr. Wexler and Mr. Discala
9 where they discuss taking the free trading shares of Cubed
10 away from Glendale and putting them at BMAC, another broker?

11 A I can't recall that conversation between Mr. Wexler and
12 Mr. Discala. If you have a transcript I can refresh my
13 recollection.

14 Q Okay.

15 A I know that --

16 Q Let me show you --

17 MR. RIOPELLE: I just have a couple more questions
18 in this area, but I have a good half hour or more. I think we
19 should take lunch when I tie this off, if I may make that
20 suggestion?

21 THE COURT: I would accept your suggestion. I was
22 working off your last suggestion, which said you'll be pulling
23 into the last station right around now.

24 MR. RIOPELLE: Judge, like most lawyers, it was
25 hyperbole and inaccurate. We'll have to go on the warning.

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1 THE COURT: Go ahead.

2 BY MR. RIOPELLE:

3 Q I'm going to show you what I've marked KCCB2. I'm going
4 to direct your attention to this page. I've written an arrow
5 in the margin, and ask you to take a look at that. And see if
6 that refreshes your recollection that Mr. Wexler was
7 frustrated with the way that the trading was being handled at
8 Glendale and wanted to move the account to BMAC.

9 MR. BINI: Your Honor, I am going to object to this.
10 This is a piece of trial testimony it was just handed to the
11 witness for which he was not present for trial testimony.

12 MR. RIOPELLE: I think you can ask the witness to
13 look at anything to refresh his recollection.

14 THE COURT: He can refresh his recollection.

15 A In reviewing the area with the arrow, I mean I can't say
16 that I knew that he was dissatisfied before or he had
17 displeasure prior to reading this.

18 Q Okay. So you just don't recall as you sit here now
19 whether you knew back in the day that Wexler was frustrated
20 with the trading at Glendale?

21 A That's correct. I can't recall if I knew that.

22 Q You can't recall. Can you put that aside?

23 MR. RIOPELLE: Judge, that's the last question in
24 this area. I do have a series of questions that will take us
25 for a while. I don't want the jury to go too long without

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1 eating.

2 THE COURT: Sounds like a good idea, Mr. Riopelle.

3 Ladies and gentlemen, we'll take our luncheon break.

4 I'm going to remind you again of your instructions
5 that you received, don't discuss the case amongst yourselves.
6 Continue to keep an open mind. Don't discuss the case with
7 anyone else. Don't use the lunch room period as an
8 opportunity to do a research of any kind. If you are on a
9 social media platform, please again remember to observe our
10 radio-silence rule.

11 I'm going to ask you to return to the central jury
12 room at around 2:45 and we'll start as close to that time as
13 we can. We'll see you then.

14 (Jury exits.)

15 THE COURT: Special Agent, you can step down.

16 (Whereupon, the witness steps down.)

17 I think it's a good time before lunch to take up the
18 matters that we were going to take up at a break.

19 MR. BINI: Thank you, your Honor. The Government
20 filed on ECF 602 under seal. And we seek to preclude the
21 testimony of Neil Levine because we think it's irrelevant.
22 Before I argue that, I would just ask because I did not hear
23 his name, if defense counsel is not planning to call him I'll
24 move on.

25 MR. ROSS: We're absolutely not calling Mr. Levine.

1 He will not be a defense once for us.

2 MR. BINI: Okay. The next topic, your Honor, are
3 the exhibits prepared by the accountant and anticipated
4 witness Haley Eckhart. Ms. Jones is going to argue this
5 portion.

6 MS. JONES: Your Honor, there are a couple of
7 objections that I have to the material produced by
8 Ms. Eckhart.

9 First of all, I think this is an egregious violation
10 of Rule 16 to wait until we're at the verge of the close of
11 the case, two days before the testimony, to dump this material
12 on us, on a Saturday when she's supposed to testify on Monday.
13 This material is extensive, it's like 100 schedules. She
14 clearly has been working on this for months. So for the claim
15 to be, oh, this came up because Joan Mazella's testimony, it's
16 simply not credible. There are portions of those schedules
17 that I think are irrelevant and inadmissible. It appears that
18 what Ms. Eckhart has been asked to do is to look at the net
19 cash in and out of Discala-related entities relating to both
20 the charge companies, and when it appears he's turning a
21 profit they add in these additional companies that are not
22 part of this case to include those changes loss such as Soul
23 and Vibe, LBAS, HRAA and ISGI, to include those trading
24 analysis just to show trading losses. They are not charged in
25 our case. They don't even show any net investments in those

1 companies. They show trading losses.

2 In addition, there are a couple of schedules in
3 there where the sole purpose of the schedule seems to be to
4 compare the money that Discala made in Code Smart versus the
5 money that a guy named Joe Salvani made in Code Smart, just to
6 compare this guy made more money trading Code Smart than
7 Discala did, relying on blue sheet data, no brokerage account
8 statements. It's completely irrelevant and has nothing to do
9 with the charges in this case.

10 Finally there are portions of the analysis that do
11 not appear to have a basis and admitted Government exhibits.
12 Again, this is a lot of material that was dumped on us over
13 the weekend. And I've been trying to go through it diligently
14 to try to identify the flaws in the analysis. But for
15 example, for one of the charged group stocks, the Staffing
16 Group, Ms. Eckhart performed an analysis, Mr. Discala loaned
17 the company almost \$800,000. Somehow that should be factored
18 into the -- I don't know what is going on here, but that
19 should be factored into the analysis.

20 When you look into the detail, approximately half of
21 that loan is from a different company, the Broadsmoore Group,
22 back from 2012 and has no underlying documentation to show
23 that the money was actually paid.

24 So this is just a lot of stuff to be dumped on us at
25 the last minute, some of which is clearly irrelevant and some

1 of which clearly does not seem to have the support or even
2 belong in whatever kind of analysis she performed.

3 MR. CHENG: I can address this issue. Ms. Jones and
4 the Government ask us to provide all the 3500 material. We
5 provided a draft copy of the report. We have since condensed
6 that report, which we have also provided. There is no way for
7 us to know what Mazella or even Wexler or any of the witnesses
8 that have testified in the last week two weeks, so while she
9 did prepare a substantially complete report, we intend on
10 condensing that based on testimony.

11 Mr. Wexler actually did plead that Mr. Discala and
12 Wexler were manipulating other companies such as TSGL, ISGI,
13 LBAS. There are references earlier in this case to Soul,
14 which is why we're including that evidence.

15 MS. JONES: He didn't plead to those charges, he
16 just has coverage for them -- I'm sorry to interrupt.

17 MR. ROSS: Judge, in addition, we provided the
18 Government last week, according to your Honor's instruction,
19 that we did have an accounting witness Ms. Eckhart. So they
20 were on notice that we intended or might call Ms. Eckhart. We
21 have made a decision during this time period to call her.
22 There are other witnesses that we did not call. And we're
23 trying to cut it down as many as we can.

24 Your Honor is aware that we subpoenaed many
25 witnesses. Some of those witnesses we just were not able to

1 locate because, we think, that they knew that we wanted to
2 subpoena them and they are just not available. So with
3 respect to this particular witness, we provided the materials
4 as soon as we could. We provided the materials in conjunction
5 with the scope of the testimony that we propose Ms. Eckhart
6 make.

7 As Mr. Cheng made references to, there are uncharged
8 crimes or uncharged companies in this Indictment or in this
9 case that your Honor has ruled come in under 404(b). There
10 has been testimony that those companies were manipulated and
11 they were manipulated by Mr. Discala. So that put in, that
12 put at issue the accounting information, the accounting
13 evidence, that we would like to present to this jury.

14 It's my understanding that this evidence is limited.
15 And that it is limited only to profit and loss. That is my
16 understanding of what Mr. Cheng intends to elicit from
17 Ms. Eckhart.

18 So I would suggest that this is an extraordinary
19 remedy that the Government is asking your Honor to do. She's
20 an important witness to us. And to completely preclude her
21 testimony would be extraordinary under these circumstances.
22 That's what I have to say.

23 MR. CHENG: The report includes rebuttal testimony
24 to Mazella, Ferrante and the Government's expert Oremland, and
25 also tracks, she's a forensic accountant, it tracks

1 Mr. Discala's trading activity as well.

2 THE COURT: Anything further?

3 MS. JONES: Your Honor, again, defense counsel only
4 produces material after I complain and complain several times
5 about where are the exhibits, where are the documents, where
6 is the 3500 material. Clearly this accountant was retained
7 several months ago. There has been no production of
8 engagement letter, no production of any information about how
9 much she's been paid or spent on this, or how much money she's
10 due.

11 Again, a lot of the schedules and information that
12 they are seeking to introduce relating to trading in companies
13 that are not part of the charged charges in this case are
14 irrelevant. We didn't produce any testimony regarding
15 Discala's profit or loss in, if they want to do the three
16 other stocks here fine, but Soul and Vibe, LBAS, HRAA, not
17 relevant.

18 MR. CHENG: They were raised in Ms. Eckhart's
19 charts.

20 THE COURT: They are not coming in, Mr. Cheng. The
21 four targeted companies, if she wants to provide accounting,
22 relevant accounting information with respect to the four
23 charged companies, she certainly will be permitted to do that.
24 To the extent that there are assumptions that she relies on
25 not rooted in evidence already been admitted before the jury,

1 those references are also out.

2 To the extent that these exhibits go beyond, that
3 her report, goes beyond that, she will have to whittle it down
4 and be ready to go. And the Government will have an
5 opportunity to review it. To the extent the Government needs
6 a continuance to the following day, I certainly am prepared to
7 grant that the continuance to give them an opportunity to
8 prepare.

9 MR. CHENG: Your Honor, but Ms. Mazella's charts
10 actually list Mr. Discala's profit and losses in HRAA, ISGI
11 and Soul. It references in Goepel's charge as well. To
12 preclude as --

13 THE COURT: Not providing, we're not going down to
14 have a mini trial on how the profit and losses arrived.

15 MR. CHENG: Are we allowed to references Ms.
16 Mazella's charge?

17 THE COURT: Absolutely. If it's in evidence, she
18 can look at it and testify as to it. Not a problem.

19 MR. CHENG: So we can reference --

20 THE COURT: Anything that is in evidence. If it's
21 in evidence she can testify as to it, where she's qualified.
22 She couldn't give an opinion in an area that she's not
23 qualified. She's here as an accountant, forensic accountant.

24 MR. CHENG: The numbers majority of the numbers
25 relate to Soul, at least relate to evidence that has already

1 been admitted.

2 MS. JONES: No, he's talking about taking the bank
3 records that are in evidence then just putting in her analysis
4 of the bank records.

5 THE COURT: I was referring to the exhibits that Ms.
6 Mazella used in her forensic, in her testimony. Any of the
7 exhibits that she used, obviously your witness can use those
8 exhibits.

9 MR. BINI: Our next topic is expert testimony, and
10 with respect to David Parker.

11 THE COURT: I thought he wasn't testifying.

12 MR. ROSS: No, no, that's Neil Levine. Neil Levine
13 is not testifying, Judge. But David Parker and Eric Engstrom
14 are testifying. We do not intend to elicit expert testimony
15 from either witness. We discuss closed 3500 material in
16 abundance of caution, and but we do not intend to elicit any
17 expert testimony either from Mr. Parker --

18 THE COURT: What evidence do you intend to elicit?

19 MR. ROSS: Mr. Parker was hired to do due diligence
20 on Cubed. So he's going to testify about his efforts in that
21 area and what he did. When and how and why. He's not going
22 to give an expert opinion about anything. It is simply a fact
23 witness. And it is relevant that Mr. Discala and Omniview
24 undertook that effort in order to make sure that this was a
25 real company, and that's relevant. That's relevant to this

1 case. And with respect to Mr. Engstrom.

2 THE COURT: Why don't we stop there. Mr. Bini?

3 MR. BINI: If Mr. Parker is not going to testify as
4 to valuation, the Government doesn't have a problem with him
5 testifying regarding --

6 THE COURT: As to what he did.

7 MR. BINI: Yes. The issue is there was an Excel
8 spreadsheet, if they are not seeking to put that in, it had
9 estimates regarding the business for Cubed, which the
10 Government believes goes to valuation, we think this is -- if
11 they were seeking to put that in, we would object to that.
12 Based on what has been stated on the record, the Government
13 doesn't object to that at this time.

14 MR. ROSS: Judge, the same is true about Eric
15 Engstrom. Mr. Engstrom was retained, has a background in
16 technology. He's simply going to testify about what he did
17 and that was to do due diligence on the technology that was
18 available at Cubed. That's it. He's not going to give expert
19 testimony.

20 MS. JONES: As long as they are not planning on
21 testifying as to their opinion as to what the value of the
22 company was.

23 For example, neither -- I don't know about Mr.
24 Parker -- Mr. Engstrom, his background is specialized in
25 working for technology companies. It's personal to his own

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1 experience. My understanding is he had one meeting with Cubed
2 for three hours to discuss what he thought they should do.
3 But in terms of opining to the jury about I think this company
4 is worth X, that would be completely inappropriate.

5 THE COURT: Apparently that's not what he's going to
6 do.

7 MR. ROSS: No, Judge, he has personal experience in
8 this area. He has a personal ability to evaluate technology
9 and --

10 THE COURT: He was asked to do that.

11 MR. ROSS: Yes.

12 THE COURT: What his the conclusions were, are not
13 coming in.

14 MS. JONES: His conclusions are not coming in.

15 THE COURT: The point, as I understand it from
16 Mr. Ross, is that Mr. Discala wanted such an analysis to be
17 performed as opposed to what the analysis might have
18 concluded.

19 MS. JONES: Okay.

20 MR. CHENG: He independently performed his analysis
21 at the time that he was involved with the company.

22 THE COURT: It's the performance of the analysis,
23 that's what is the object of the testimony, as I understand
24 it, as opposed to the conclusion.

25 MR. ROSS: Simply --

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1 THE COURT: As to value.

2 MR. ROSS: -- simply based on Mr. Engstrom's
3 knowledge and experience and what he did, he ought to be able
4 to state what he concluded about the technology in the
5 company.

6 MS. JONES: No.

7 THE COURT: He can state that he came -- I'll let
8 you go even as far as he came to a conclusion and advised
9 Mr. Discala what the conclusion was, the rest is not relevant.

10 MR. CHENG: Your Honor, one request, can we request
11 that we move Ms. Eckhart until tomorrow morning. If we do
12 have --

13 THE COURT: We're going --

14 MR. CHENG: -- to revise the schedules.

15 THE COURT: -- to revise the schedule provided that
16 you give that to the Government as you do it.

17 MR. CHENG: Correct, your Honor, we'll provide.

18 THE COURT: Which means today.

19 MR. CHENG: Yes, your Honor.

20 THE COURT: She should be in the business of doing
21 that now.

22 MR. CHENG: She will be, your Honor.

23 MR. ROSS: Judge, I just had one other thing that I
24 wanted to place on the record. As, your Honor, knows we
25 subpoenaed a lot of witnesses here. And we've done -- and

1 we've paired the number of witnesses down substantially. At
2 this point we have three witnesses ready to go. And their
3 testimony will be presented.

4 We had intended to call a man by the name of Diego
5 Roca. We've given the Government notice that we intended to
6 call Mr. Roca. Mr. Roca is the former Chief Financial Officer
7 at Code Smart. We would proffer that he could testify about
8 Mr. Discala's efforts at refinancing Code Smart.

9 We spoke to him. He had relevant testimony to give.
10 But over the last few days when we've tried to get in touch
11 with him about his testimony here, he's not in touch with us
12 at all. I left a message for him saying that he was under
13 subpoena. That under 17G that we can ask, your Honor, to hold
14 him in contempt.

15 And I don't know, the Government has with respect to
16 another potential witness that we gave notice of a man called
17 Paul Lane, who appeared on one of the transcripts and wiretap
18 conversations that they wanted. And I understand this, that
19 they wanted to know whether or not he had a lawyer. They
20 viewed him as an unindicted co-conspirator. I know your Honor
21 does not want to have invocations on the witness stand, that's
22 just not, as you said, going to happen. It's not proper.

23 But by the same token, the Government's efforts in
24 this area, and I don't know whether they went out and spoke to
25 Mr. Roca, he's an important witness to us and now he doesn't

1 appear to be available. So any Government efforts at chilling
2 our witnesses I simply wanted to put on the record for, your
3 Honor, to understand and put, your Honor, on notice about
4 that.

5 Indeed just during this morning's testimony we
6 discovered, and I now have a telephone number for Dan Walsh,
7 who's name has come up in connection with this case and this
8 evidence. And I did tell, your Honor, that it was a ongoing
9 effort that we would have to try to reach witnesses. I don't
10 know whether we'll decide to call him. I did want to let your
11 Honor know that we were finally able to reach what we believe
12 may be an important witness to our defense.

13 MS. JONES: Your Honor, just to be clear, the
14 Government has not reached out to Mr. Roca. We have not
15 reached out to any of the defense witnesses. We are not
16 making any attempts to interfere with their defense case.
17 Frankly, this case has been going on, we're on our fifth week,
18 they should be ready, they should be ready to go.

19 THE COURT: I totally agree with that.

20 MS. JONES: Regarding Ms. Eckhart, if the issue is
21 redacting certain portions of the report, the Government would
22 be willing to just have them cover it up and prepare to move
23 forward today. Then we could they could make it look nice by
24 the time we give it to the jury. If all it is is just an
25 issue of covering up the portions that are irrelevant, we want

1 to move forward.

2 THE COURT: That would make even better sense.
3 Mr. Cheng.

4 MR. CHENG: That's fine with us.

5 THE COURT: That's fine with them too.

6 MS. JONES: Great.

7 THE COURT: Then you all can, again, with redaction
8 I have a very basic rule, allow counsel to work it out amongst
9 themselves. Where there is a loggerhead, I break the tie.

10 MR. CHENG: It would be impossible to redact the
11 total if we're computing including all the companies. We'll
12 leave the total out there, but redact the companies for the
13 companies.

14 MS. JONES: If the math is wrong, it should be
15 redacted.

16 THE COURT: There are a million ways to redact
17 things, Mr. Cheng. You have plenty of time to reassemble the
18 document.

19 MR. CHENG: If the Government is asking us to
20 recompute the numbers then we would have to need time to
21 prepare the new computations for the schedules it can't just
22 be redacted.

23 THE COURT: I don't know if, they are, how it works.
24 If you're eliminating names, the column, and that column is
25 used to compute this column.

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1 MR. CHENG: They are all independent.

2 THE COURT: If they are all independent, once
3 eliminate it, it doesn't matter.

4 MR. CHENG: There are certain totals that would
5 include the numbers --

6 THE COURT: But to the extent that the mechanic of
7 doing the document would probably be more time consuming as
8 long as long as there is an understanding of what areas of
9 inquiry are appropriate, that seems to be a much larger
10 process in turning that around. Then reassembling the
11 document after the testimony.

12 MR. CHENG: Very well.

13 MR. BINI: Thank you.

14 MS. JONES: Thank you.

15 MR. ROSS: Thank you.

16 THE COURT: Anything else?

17 MS. JONES: Your Honor, I had circulated among the
18 parties the redacted Indictment, which removed the other
19 co-defendants and removed Count Five.

20 THE COURT: You can. I'll tell you why it's not a
21 big deal, because I never send the Indictment in any way.

22 MS. JONES: Oh, okay.

23 THE COURT: It's restated in the charge, the verdict
24 sheet will be renumbered to reflect the elimination of Count
25 Five.

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1 MR. BINI: Thank you, Judge.

2 THE COURT: Let me, we're at that stage of while
3 we're here, we can do it formally after the Government rests
4 or not, you tell me. I'll let defense counsel do it now or
5 after the Government formally rests, that is to make an
6 inquiry to Mr. Discala and Ms. Cane as to whether or not they
7 are going to exercise their rights to, or exercise their right
8 to take the stand.

9 MR. ROSS: Your Honor, I think we would like to wait
10 until after the Government formally rests.

11 THE COURT: That's fine.

12 MR. ROSS: We are still in the process of making
13 that decision. I don't think that we have formally made that
14 decision yet. We reserve our right. If Mr. Discala wishes to
15 take the stand in his own defense, that we not be bound by any
16 sort of representation right after the Government rests. We
17 have witnesses to put on. And at this stage I think it would
18 be premature to get a commitment one way or the other from
19 Mr. Discala until we hear our defense witnesses.

20 THE COURT: You can wait until the end. Obviously
21 with the case with Ms. Cane, we'll soon be on defendant Cane's
22 last witness.

23 MR. RIOPELLE: Your Honor, ultimately this decision
24 is her's to make, but I do not believe she will be testifying
25 in the defense case. I'll confirm that over lunch.

1 THE COURT: What I mean, I'm going to ask them
2 personally in an allocution whatever their decision is.

3 MR. RIOPELLE: I will let her know that the Court
4 intends to proceed in that way. I will say that I would like
5 to preserve Ms. Cane's right to testify in a rebuttal case if
6 Mr. Discala does testify and says something that I think must
7 be rebutted by her. But I do not, it is not my present
8 intention to encourage her to take the witness stand in her
9 defense.

10 THE COURT: And I think to the extent that things
11 change, Mr. Riopelle, I don't have a problem with that.
12 Particularly, it remains the right of the individual
13 defendant. And to the extent that she whispers in your ear
14 and says, Tell the Judge I change my mind, please.

15 MR. RIOPELLE: I will not conceal that fact.

16 THE COURT: Okay. Obviously it's her right, as it
17 is Mr. Discala's.

18 MR. RIOPELLE: Understood, your Honor. I just
19 wanted to make the record clear.

20 THE COURT: A lot of times we talk about the right
21 to remain silent; there is also a right to take the stand.

22 MR. RIOPELLE: Sure, sure.

23 THE COURT: And equally important under the Fifth
24 Amendment.

25 MR. RIOPELLE: Understood, your Honor.

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1 THE COURT: We'll see you after lunch. Otherwise
2 the rules remain the same.

3 (Lunch recess.)

4 (Continued following page.)

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1 A F T E R N O O N S E S S I O N

2 (Time noted: 2:45 p.m.)

3 (In open court; Jury not present.)

4 THE COURTROOM DEPUTY: All rise.

5 Court is back in session.

6 Counsel for both sides present as well as
7 defendants.

8 THE COURT: Ready to go?

9 MS. JONES: Yes, Your Honor.

10 THE COURT: You have the witness?

11 MS. JONES: We're getting him, Your Honor.

12 (Whereupon, the witness resumes the stand.)

13 (Jury enters the courtroom.)

14 THE COURT: Be seated, please.

15 Counsel will stipulate that the jury is present and
16 properly seated.

17 MS. JONES: Yes, Your Honor, agreed.

18 MR. RIOPELLE: So stipulated, Your Honor.

19 THE COURT: Counsel, ladies and gentlemen, welcome
20 back. Hope you enjoyed your lunch. We're ready to resume.

21 As you remember, when he we broke for lunch Special
22 Agent Voulgaris was on the stand and Mr. Ripoeille was in the
23 midst of his cross-examination, which you may now proceed to
24 continue.

25 MR. RIOPELLE: Thank you, Your Honor.

1 CROSS-EXAMINATION (Continued)

2 BY MR. RIOPELLE:

3 Q Special Agent Voulgaris, I'd like to direct your
4 attention back to May 23rd of 2014.

5 I believe you described in your direct testimony
6 that day as a significant one in your investigation. Is that
7 correct?

8 A Yes.

9 Q And it was a significant day because on that day, the
10 price of Cubed shot up, correct?

11 A Most other things, yes.

12 Q Yes, it increased substantially and there was a lot of
13 talk on the wire about Cubed, correct?

14 A Generally about losing control of the stock price.

15 Q And I wanted to get to that.

16 There was a loss, as you characterize it, as a loss
17 of control of the stock price, right?

18 A Yes.

19 Q And that's because someone other than my client,
20 Mr. Discala, and others whom you had identified as subjects
21 seem to have taken an interest in the stock, correct?

22 A I'm sorry, can you restate that question.

23 Q There was significant interest in buying the stock,
24 correct? That day?

25 A I can't -- I don't know if there was a significant

VOULGARIS - CROSS - RIOPELLE

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1 interest in buying the stock.

2 What I can tell basically from the investigation
3 somebody that was outside the control of at Glendale made a
4 significant purchase that was not within the parameters of
5 what Ms. Cane and Mr. Discala wanted.

6 Q So it's your testimony that the defendants lost control
7 of the price of the stock, at least for a time on that day.

8 A Yes.

9 Q And we listened to a phone call during your direction
10 examination, at least one in which my client and Mr. Discala
11 discussed the fact that there appeared to be activity in the
12 stock that they didn't understand, correct?

13 A Yes.

14 Q And indeed my client at one point expressed the view that
15 she didn't know what had happened, correct?

16 A At one point, yes.

17 Q And then you told us that, and we heard that there was
18 talk on the wire about making the price land at \$6.35,
19 correct?

20 A Yes.

21 Q It's a fact, isn't it, the stock price of Cubed at the
22 end of May 23rd did not land at \$6.35?

23 A It was around there. If you show me that document that
24 shows the stock price for the day.

25 Q Let me ask you this: Do you recall that the stock price,

VOULGARIS - CROSS - RIOPELLE

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1 and we saw some of the documents when Mr. Bini was asking the
2 question I just want to sort of speed through it, do you
3 recall that the price at the end of the day was \$6.30?

4 A Yes, I believe so.

5 Q And I think we agree that's close to 6.35, correct?

6 A It's within 5 cents.

7 Q Okay. But it's not \$6.35.

8 A No.

9 Q So to the extent you made any findings they were that the
10 defendants could not control the price of the stock well
11 enough to make it land at \$6.35, correct?

12 A I can't come to that conclusion. There were a lot of
13 different factors that come into it. The stock price
14 skyrocketed above \$7 a share on that day.

15 And as they stated in the telephone calls, they were
16 able to correct the price back downwards to where they wanted
17 it or within a range of where they wanted it.

18 Q They wanted it at \$6.35, correct?

19 A At least one party mentioned that.

20 Q That's what we heard on the telephone call we all
21 listened to in court, correct?

22 A Yes.

23 Q But they were not able to make it land at \$6.35; isn't
24 that right?

25 A Not exactly.

VOULGARIS - CROSS - RIOPELLE

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1 Q And you talked about how on May 23rd the price shot up
2 quickly, correct?

3 A Yes.

4 Q And they lost control of the price then; isn't that
5 right?

6 A Yes.

7 Q So it's a fact, isn't it, that your findings are that the
8 defendants could not dictate the price of this security,
9 Cubed; isn't it?

10 A I can state that basically in the investigation they were
11 able to dictate downwards again. Maybe not to the exact point
12 that they wanted it, but they were able to correct the
13 price -- correct the large spike that they were so concerned
14 about.

15 Q Right. But they could not dictate the price, correct?

16 THE COURT: Specifically.

17 Q Yes, they could not dictate a specific price of \$6.35?

18 THE COURT: On May 23rd.

19 Q On May 23rd?

20 A On that day they could not achieve the \$6.35.

21 Q Now, since that day, you have reviewed, have you not,
22 text messages that Wexler, Mr. Marc Wexler, and Mr. Victor
23 Azrak sent to Mr. Discala that day, May 23rd, 2014.

24 A If you could refresh my recollection on what I saw.

25 Q Yes, let me show you a series of text messages, which

VOULGARIS - CROSS - RIOPELLE

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1 I'll mark KCCV, and I think we're up to 3.

2 Okay, I'm showing you now what's been marked KCCV3,
3 sir, and ask you to look through those quickly.

4 (Whereupon, the witness is reviewing the document.)

5 Q Have you had a chance to look at those?

6 A Yes.

7 Q Does that refresh your recollection, sir, that Mr. Wexler
8 and Mr. Azrak were texting Mr. Discala on May 23rd happy about
9 the spike in price that occurred that day?

10 A I mean they said this is great, so I would assume that
11 they're excited about it.

12 Q Right. They liked the spike in price, correct? As you
13 recollect it?

14 A As I'm reviewing this right now.

15 Q Yes.

16 A Yes, it seemed that they're pleased.

17 Q And do you recall, sir, that they wanted to keep the
18 price up high?

19 A I can't recall. I mean based on this document, Marc
20 Wexler says, I'll hang at 704. Build it around me.

21 Q Based on your experience, does that help you remember
22 that in fact they wanted to keep the price up as high as
23 possible?

24 A I'm saying I don't remember that at the time of the
25 investigation. Reading this right now, it appears that Marc

1 Wexler wants the price to be built around him at 704.

2 Q Okay. But that's different than what Ms. Cane wanted in
3 the phone calls we listened to, correct?

4 A Yes.

5 Q Now did your findings in connection with the
6 investigation include the finding that the Glendale account,
7 the Ben-Bassat account, did not sell any shares of Cubed after
8 June 30th of 2014?

9 A I believe that's correct.

10 Q And, in fact, they did not buy any shares of Cubed after
11 June 30th, 2014 either, correct?

12 A You said "they".

13 Q Glendale. I'm sorry.

14 The Ben-Bassat account at Glendale did not buy in
15 any shares of Cubed after June 30th, 2014; is that correct?

16 A That's correct.

17 Q And indeed, the Ben-Bassat account at Glendale did not
18 buy shares in of Cubed at any time during the time the market
19 was active in Cubed, correct?

20 A As far as I can recall, that's correct.

21 Q Now, is Cubed what you would characterize as a
22 thinly-traded stock?

23 A Yes.

24 Q And that's a stock that typically trades a few thousand
25 shares in a day? Or even less.

1 A Yes. I mean you want me to refer to the records?

2 Q Or just give me a sense of what you mean by a
3 "thinly-traded stock," so I know we're talking about the same
4 thing.

5 A I believe the Cubed they traded only a couple hundred
6 shares to a couple thousand shares a day.

7 Q Okay. And with a thinly-traded stock like that, there is
8 always a possibility that the price can spike up as it did on
9 May 23rd, correct?

10 A I suppose, yeah, there is that possibility.

11 Q But we've established that -- and there's also the
12 possibility in a thinly-traded stock that sales of shares can
13 cause the price to decline, correct?

14 A That is a possibility as well.

15 Q Because the price of a stock is set based upon how many
16 buyers and how many sellers there are at any given time,
17 correct?

18 A Most of other factors, yes.

19 Q The supply and demand for a particular stock are an
20 important influence on its price, correct?

21 A I'd say so, yes.

22 Q Now, but after June 30th, as we've established, there was
23 no trading of any kind in the Ben-Bassat account at Glendale,
24 correct?

25 A Yes.

VOULGARIS - CROSS - RIOPELLE

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1 Q So during that point of time, it's approximately three
2 weeks then before my client is arrested, correct?

3 A Yes.

4 Q And so during that point in time, the Ben-Bassat account
5 is neither selling nor buying Cubed, correct?

6 A Correct.

7 Q So the activity of the Ben-Bassat account is not
8 influencing the price of Cubed during that three-week period;
9 is that a fair statement?

10 A I mean I wouldn't say that. Those are the shares that
11 are the only shares that were released out in the market. And
12 he still held shares in that account.

13 Q Okay, let me ask you this:

14 Were there not shares trading in the market during
15 that three-week period?

16 A Between July 30th and the 17th? I'm sorry.

17 Q June 30th and the 17th?

18 A Yeah, there were trades in the market, yes.

19 Q Right. In fact, there were lots of trades; weren't
20 there? You don't know?

21 A I don't know.

22 Q We'd have to look at the trading records, the blue sheets
23 or whatever they're called, to be certain. But as you sit
24 here now, you know there were trades in that three-week
25 period, correct?

VOULGARIS - CROSS - RIOPELLE

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1 A Yes.

2 Q And those trades, because the few remained of
3 thinly-traded stock during that three-week period; did it not?

4 A Without looking at the records rightly, I can just assume
5 that it was still thinly trading, yes.

6 Q And those trades during that three-week period could
7 influence the price of Cubed, correct?

8 A Correct.

9 Q But the Ben-Bassat account did not trade during that
10 period.

11 A No, it didn't.

12 Q Now, by the way, even when the Ben-Bassat account was
13 trading from late April to the end of June 2014, it is a fact,
14 is it not, that the Ben-Bassat account was not trading every
15 day?

16 A Um, from the trade confirms, yes, that's correct. It was
17 not trading every day.

18 Q And there were sometimes days at a time where there was
19 no trade out of the Ben-Bassat account, correct?

20 A Without reviewing the records, I can't tell you how many
21 days went by.

22 Q Okay. Let me see if I can help.

23 I'd like to show you what's been previously marked
24 in evidence as Government's Exhibit 196-13.

25 And, sir, just to orient you, you've never seen this

1 before; have you?

2 A I've seen this.

3 Q You've seen this?

4 A Yes.

5 Q Okay, so you have a general familiarity with it?

6 A Yes. If you can push it up so I can see the legend
7 underneath. Okay.

8 Q Yes, sorry.

9 A Great. Thank you.

10 Q The source is, and it tells us that green relates to
11 Ben-Bassat, and this color relates to select accounts, buy,
12 and this is select accounts sale?

13 A Yes.

14 Q And you have some familiarity with this chart, correct?

15 A Yes.

16 Q Okay. And if we look along the bottom, there are dates
17 listed for the dates on which the Ben-Bassat account did sell
18 Cubed, correct?

19 A Yes.

20 Q And so we could see that, for example, there are some
21 dates where there's a gap, if you look over here, for example,
22 there's a sale on June 13th and then no other sale until
23 June 23rd. The chart tells us that, right?

24 A It appears to be that. I don't know -- without looking
25 at some of the backup data, I wouldn't be able to tell you

VOULGARIS - CROSS - RIOPELLE

3119

1 precisely if there's a ten-day gap in the trading. But based
2 on this, there's no trades that day.

3 Q There's no trades that day.

4 And you told us you're generally familiar with this
5 chart?

6 A Yes.

7 Q This looks like charts you did review when you were
8 working on the case, correct?

9 A The records that this may have been based on I've
10 definitely reviewed.

11 Q Okay. And just so we're clear, the Ben-Bassat trades are
12 all shown as sales, correct, on this chart?

13 A Yes.

14 Q The sales are shown as under the line, correct?

15 A Yes.

16 Q And buys are shown as above the line, correct?

17 A That's correct.

18 Q And you're familiar with the concept of a match trade,
19 correct?

20 A Yes.

21 Q And if we look at this chart, for example, on May 28th,
22 2014, you can see that the Ben-Bassat account sells 5200
23 shares that day, correct?

24 A Yes.

25 Q And the select accounts that are associated with others

VOULGARIS - CROSS - RIOPELLE

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1 including Mr. Azrak, Mr. Bell, Mr. Wexler, et cetera, they are
2 neither buy or sell that day, correct?

3 A Based on this chart, that's correct.

4 Q Correct. And so if the chart is correct, there's just no
5 chance there was a matched order that day, correct?

6 A I mean I'd have to look at the underlying records.

7 Q I understand. But looking --

8 A Based on this.

9 Q Correct.

10 A That's correct.

11 Q And the same would be true, by the way, at the end where
12 everybody's selling, right?

13 A It appears. I can't say again definitively not looking
14 at the underlying records.

15 Q Right. You didn't make this chart and you'd have to
16 check the records, correct, to be sure?

17 A That's correct.

18 Q But if the chart indicates that everybody is selling from
19 about, I want to say June 13th, until the last sale failed by
20 the Ben-Bassat account on the 30th, correct?

21 A Yes.

22 Q And so there doesn't appear -- if the chart is correct,
23 there doesn't appear to be any evidence of a matched order or
24 a wash sale during that last two or three weeks, correct?

25 A That's correct. Based on the chart.

VOULGARIS - CROSS - RIOPELLE

3121

1 Q Okay. Now during your testimony earlier today on direct
2 examination, you were -- we played a phone call and there was
3 a reference to a firm called "PWC."

4 Do you remember that?

5 A Yes.

6 Q Do you associate PWC with a particular entity the way we
7 do the FBI and the SEC or other acronyms?

8 A Yes.

9 Q Who do you associate PWC with?

10 A PricewaterhouseCoopers.

11 Q And just so we're clear, that's a great big accounting
12 firm, right?

13 A It's one of the big four.

14 Q Right, one the four largest accounting firms, correct?

15 A I can assume that, yes.

16 Q Okay. Now, we also heard -- I'm going to get that out of
17 the way.

18 We also heard or saw some texts about June 7th,
19 2014, and a statement that Cubed stock is creeping up.

20 Do you remember looking at a text about that this
21 morning?

22 A Can you show it to me again?

23 Q I don't think I have it. I'll skip that if you can't
24 recall it.

25 Do you recall a phone call, which we listened to

VOULGARIS - CROSS - RIOPELLE

3122

1 earlier today, on June 12th, 2014, in which Mr. Josephberg
2 asked Mr. Discala what's going on with CRPT?

3 A Yes.

4 Q That one you remember. Okay.

5 Do you know, as you sit here now, whether there was
6 any trade in the Ben-Bassat account on June 12th, 2014?

7 A Without checking the records, I can't make that. I'm
8 unaware.

9 Q Okay. But it turns out we can do that, because there
10 would be a confirm if there was a trade, right?

11 A I assume so, yes.

12 Q And we have the confirms, correct? That was Government's
13 Exhibit 149-4, right?

14 A Yes.

15 Q And if we go through them, they're organized by date.
16 And you can see that, for example, this one is in May. So if
17 we just flip through. Okay, here we go.

18 You can see June 6th. There's June 9th, three days
19 later. There's a trade on June 11th, a couple days after
20 that. No trade on June 10th, I guess. And then the next
21 trade is June 13th, 2014.

22 So insofar as the confirms can tell us anything,
23 they tell us that there was no trade in the Ben-Bassat account
24 on that day, June 12th, that we heard about earlier today,
25 correct?

VOULGARIS - REDIRECT - BINI

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1 A Yes.

2 MR. RIOPELLE: I have no further questions, Your
3 Honor.

4 Thank you, Special Agent Voulgaris.

5 THE COURT: Thank you, Mr. Riopelle.

6 Mr. Bini, any redirect?

7 MR. BINI: Yes, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. BINI:

10 Q Special Agent Voulgaris, Mr. Bowman asked you some of
11 questions about profits and losses as to StarStream and TSGL.
12 I just wanted to ask you:

13 Who's responsible for the financial analysis in the
14 FBI's investigation?

15 A As pertaining to this investigation, it was our forensic
16 accountant.

17 Q Okay. And what was her role in the investigation?

18 A She reviewed a lot of the financial support documentation
19 we received via a subpoena. A lot of the trade analysis,
20 brokerage account analysis, bank analysis.

21 Q So with respect to a question regarding the financial
22 analysis of those stocks, would she be the right individual to
23 ask?

24 A Yes.

25 Q Mr. Riopelle asked you some questions regarding your

VOULGARIS - REDIRECT - BINI

3124

1 employment history before you came to the FBI.

2 I just wanted to ask you: How long have you been
3 with the FBI?

4 A Eight years in August.

5 Q And what you testified to this jury about, is it based
6 upon your experience in the FBI?

7 A Yes.

8 Q And is it based upon your investigation in this case?

9 A Yes.

10 Q Mr. Riopelle asked you some questions regarding 149-4
11 regarding solicited and unsolicited orders. I just wanted to
12 ask you, sir:

13 Would those records have been prepared by Glendale?

14 A Yes.

15 Q The broker where George -- the brokerage house, rather,
16 where George Castillo worked?

17 A Yes.

18 Q And based upon your investigation, did Glendale receive
19 shares at a significantly discounted price to assist with this
20 conspiracy?

21 A Yes.

22 MR. RIOPELLE: Objection.

23 THE COURT: Sustained.

24 MR. RIOPELLE: Move to strike.

25 THE COURT: Stricken.

VOULGARIS - REDIRECT - BINI

3125

1 Q Based upon your investigation, did you find that Glendale
2 had received any benefit for their work with Discala and Cane?

3 MR. RIOPELLE: Objection.

4 THE COURT: Why don't you link it to an account, or
5 a corporation, or whatever.

6 MR. BINI: Okay.

7 Q With respect to George Castillo and the David Ben-Bassat
8 account -- let me back up.

9 Did your investigation look to shares of Cubed?

10 A Yes.

11 Q And did you track shares of Cubed related to an
12 individual named Marche Godffrey?

13 A Yes.

14 Q Where, if anywhere, did you find that those shares of
15 Cubed belonging to Marche Godffrey went?

16 A They were deposited first to Northwest Resource to Cubed
17 then to Cede & Co.

18 Q Sorry. I apologize. I've confused my individuals.

19 Let me ask you about Marcus Poe, the shares of
20 Marcus Poe.

21 Did you trace where, based on the transfer records,
22 what happened to the Cubed shares held by Marcus Poe?

23 A Yes.

24 Q And what did you find?

25 A That 25,000 shares were deposited with GCEF fund or

1 management, and the remainder of the shares were deposited
2 with JPMorgan.

3 Q And what did you find as to the address of GCEF
4 Opportunity Fund?

5 A It's the same as Glendale Securities.

6 Q And was there a check in the amount of approximately 6200
7 from a Paul Eric Flesche for those shares?

8 A Yes.

9 Q And did we review those in evidence during your direct
10 examination?

11 A Yes.

12 Q And did it indicate it was payment for 25,000 shares?

13 A Yes.

14 Q Is that a purchase price of approximately 25 cents a
15 share?

16 A Yes.

17 Q And based on that, what conclusions, if any, did you make
18 regarding what Glendale's brokerage house and specifically
19 Paul Eric Flesche had received?

20 A 25,000 shares of Cubed at a deep discount.

21 Q At approximately 25 cents each?

22 A Yes.

23 Q What was the stock trading at in and around May and June
24 of 2014?

25 A Above \$6 a share.

VOULGARIS - REDIRECT - BINI

3127

1 Q So would those shares have been worth more than \$150,000?

2 A Yes.

3 Q That were received for only \$6,000?

4 A Yes.

5 MR. BINI: Mr. Riopelle asked you some questions
6 regarding text messages that I wanted to briefly go through.

7 If we can show on the screen and so, William, I ask
8 to use the overhead computer. If we could show 129-92.

9 (Exhibit published.)

10 MR. BINI: If you can blow up the back.

11 Q And without going through all the text messages on your
12 direct examination, did you testify regarding certain text
13 messages involving Kyleen Cane and Northwest Resources?

14 A Yes.

15 Q And if we can go to the next page of this.

16 Okay, if we can go to 129-93.

17 (Exhibit published.)

18 And what's the date of this text message?

19 A June 21st, 2013.

20 Q And who are the parties to this text message?

21 A Joe Laxague and Kyleen Cane.

22 Q If we go to the second page -- rather let's go to 129-94,
23 another one of these messages.

24 (Exhibit published.)

25 Do you see where the text message on June 26th, at

1 2130 between Cane and Joe Laxague?

2 A Yes.

3 Q And what does that one say?

4 A Lazar wants to know asking prices for Northwest, non-DTCC
5 and Thompson.

6 Q And then there's the next text message from Cane where it
7 talks about \$300.

8 A Yes.

9 Q Okay, and then if we go to the second page, I'd like to
10 ask you what is that text message, who's it from?

11 A From Kyleen Cane.

12 Q To whom?

13 A Joe Laxague.

14 Q And what did Cane indicate in that text message?

15 A The sale of each shell company would be \$300,000.

16 Q Based on your review of these text messages from 2013
17 regarding Northwest Resources, what, if any, did you find
18 Cane's role was as to the sale of Northwest Resources?

19 MR. RIOPELLE: Objection.

20 THE COURT: See you at sidebar.

21 (Continued on the next page.)

22 (Sidebar conference.)

23

24

25

SIDEBAR CONFERENCE

3129

1 (The following occurred at sidebar.)

2 MR. BINI: Your Honor, the cross-examination had
3 suggested that the text messages are irrelevant, and what I am
4 asking about is the control of the sale of the shell and why
5 it's important to the investigation.

6 I would anticipate he would say it goes to Cane's
7 control of Northwest Resources, so I think the text messages
8 are important to cross-examination. As suggested there's
9 no --

10 MR. RIOPELLE: It doesn't show control, it just
11 shows two people talking about what's the right price to ask.

12 THE COURT: I think on his cross was to show that
13 there was no connection, with respect to Cubed at the time
14 this stuff was going on.

15 MR. RIOPELLE: Yes. Okay. Thank you, Judge.

16 (End of sidebar conference.)

17 (Continued on the next page.)

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VOULGARIS - REDIRECT - BINI
PROCEEDINGS

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1 (In open court; Jury present.)

2 BY MR. BINI:

3 Q Mr. Riopelle asked you some questions regarding the
4 impact of the David Ben-Bassat account on Cubed shares after
5 June 30th, 2014.

6 Was that the last sale of stock from the David
7 Ben-Bassat into the Cubed account?

8 A Yes.

9 Q What did your investigation find as to the impact, if
10 any, of the David Ben-Bassat account on Cubed after that
11 point?

12 A After June 30th?

13 Q Yes.

14 A There were no additional transactions in that account.

15 Q Based upon your investigation, do you believe the
16 Ben-Bassat account was still important even after June 30th,
17 2014?

18 A Yes.

19 Q Why?

20 A Those are the original shares that came out of the
21 account -- that were released into the market. That was that
22 first I guess tranche of 267,000 shares. They introduced the
23 shares into the market.

24 Q Mr. Riopelle asked you some questions regarding whether
25 the ability of or -- excuse me, strike that.

VOULGARIS - REDIRECT - BINI
PROCEEDINGS

3131

1 Mr. Riopelle asked you questions regarding whether
2 Kyleen Cane's limited trading authority over the David
3 Ben-Bassat account was unusual; is that right?

4 A Yes.

5 Q Okay. And I'd like to ask you, sir -- and he asked you
6 whether it was illegal to have somebody else on the account?

7 A That's correct.

8 Q I'd like to ask you, sir:

9 Did you find anything unusual based upon your
10 investigation about the David Ben-Bassat account?

11 MR. RIOPELLE: Objection.

12 THE COURT: Sustained.

13 Q Based upon your investigation, what did you find the
14 David Ben-Bassat account was used for?

15 MR. RIOPELLE: Objection.

16 THE COURT: Sustained.

17 Q Did your investigation look to sales from the David
18 Ben-Bassat account?

19 A Yes.

20 Q And what did you find was the sales activity from the
21 David Ben-Bassat account?

22 A The sales of the shares were being coordinated by
23 Ms. Cane, but they were also being -- the actual prices and
24 the sales were being coordinated.

25 Q And the sales from the account, were they at the same

VOULGARIS - REDIRECT - BINI
PROCEEDINGS

3132

1 price throughout the April to end of June time period?

2 A No.

3 Q What prices were they at, sir?

4 A So they dictated wherever Ms. Cane or Mr. Bassat actually
5 wanted the price set that day.

6 Q And were the prices always at \$5.25, or did the sales
7 change during the period from approximately the end of
8 April 2014 to the end of June 2014?

9 A They changed.

10 Q How so?

11 A They increased.

12 Q From approximately what price to what price, sir?

13 A From which date range?

14 Q From the end of April 2014 through the end of June 2014.

15 A They started off about a dollar -- I'm sorry, five
16 twenty-five, and ended end of June just shy of \$7 a share.

17 Q Those were the sales prices out of the account?

18 A From what I can recall, unless I can see a record to show
19 me otherwise.

20 Q Okay. And do the sales prices from that account roughly
21 match the stock price for Cubed?

22 A Yes.

23 MR. BINI: No further questions, Your Honor.

24 THE COURT: Mr. Bowman, do you have any?

25 MR. BOWMAN: Yes, Your Honor.

VOULGARIS - RE CROSS - BOWMAN

3133

1 May I have 129-101, please, government exhibit.

2 RE CROSS-EXAMINATION

3 BY MR. BOWMAN:

4 Q Agent Voulgaris, I'm going to ask you to look at what is
5 now GX129-101. And this is a text exchange between Ms. Cane
6 and Mr. Discala that you've testified about earlier.

7 A Yes.

8 Q Starting with very good, ETC fixed, name change started,
9 split started, Doug moving in a CDO.

10 Do you know who Doug was?

11 A Yes.

12 Q Who is that?

13 A Doug Shinsato.

14 Q And he was a person whose name came up during the course
15 of your investigation?

16 A Yes.

17 Q Drafting licensing deal, all in.

18 MR. BINI: Objection. Outside the scope of the
19 cross-examination, or redirect examination.

20 MR. BOWMAN: I believe that Mr. Riopelle crossed on
21 this.

22 THE COURT: I'm going to allow it as followup.

23 Q All in motion, just as in plan I sent.

24 THE COURT: It's not cumulative at least, it's
25 something new.

VOULGARIS - RECROSS - RIOPELLE

3134

1 MR. BOWMAN: Yes.

2 Q And Mr. Discala says, You're the best, TY, TY, truly.

3 Was Mr. Discala expressing his gratitude to Ms. Cane
4 for the work she was doing?

5 A It appears so.

6 Q And would you say he was very grateful based on the fact
7 that he said thank you, thank you, truly?

8 MR. BINI: Objection. Relevance.

9 THE COURT: Yes.

10 Q Did it appear that he was relying upon Ms. Cane to do the
11 tasks that she said she had accomplished?

12 MR. BINI: Objection.

13 THE COURT: Sustained.

14 Q Do you recall who gave you the information as to where
15 Mr. Discala was when he -- when you went to his house?

16 MR. BINI: Objection. Outside the scope.

17 THE COURT: Sustained.

18 MR. BOWMAN: I have nothing further, Your Honor.

19 THE COURT: Thank you, Mr. Bowman.

20 Anything from you, Mr. Riopelle?

21 MR. RIOPELLE: Yes, just a question or two.

22 RECROSS-EXAMINATION

23 BY MR. RIOPELLE:

24 Q Special Agent Voulgaris, as the case agent, did you ever
25 seek an arrest warrant for George Castillo?

VOULGARIS - RECROSS - RIOPELLE

3135

1 A No.

2 Q And so far as you know, George Castillo at Glendale
3 Securities never been arrested, correct?

4 MR. BINI: Objection, Your Honor.

5 THE COURT: Sustained.

6 Q And same is true of Hunter Adams, correct?

7 MR. BINI: Objection, Your Honor.

8 THE COURT: You're asking if he got an arrest
9 warrant?

10 Q Did you ever seek an arrest warrant --

11 MR. BINI: Outside the scope. And this was already
12 deal with on his cross.

13 THE COURT: Yes, it is outside the scope of the
14 redirect.

15 MR. RIOPELLE: Then I will withdraw the question,
16 Your Honor.

17 Thank you, Special Agent Voulgaris, I know you have
18 some place to go. God speed.

19 THE COURT: Thank you.

20 I assume, Mr. Bini, there is no redirect.

21 MR. BINI: There is not, Your Honor. Thank you.

22 THE COURT: Special Agent Voulgaris, thank you very
23 much. You are excused.

24 THE WITNESS: Thank you, Your Honor.

25 (Whereupon, the witness was excused.)

1 THE COURT: Ms. Jones.

2 MS. JONES: Your Honor, the government rests.

3 THE COURT: The government rests?

4 MS. JONES: Yes.

5 THE COURT: Ladies and gentlemen, as you will
6 recall, once you start harkening back to the instructions you
7 received way began at the beginning of trial, I would refer to
8 these various building blocks. Well, we've come to one those
9 end of the building block. The government has rested.

10 As you'll recall, it's not the end of the case by
11 any stretch of the imagination, it's just we reached a
12 milestone.

13 Now, sometimes when we reach milestones, the Court
14 has to get reconfigured a bit on legal issues that come up
15 that don't involve the jury, and it's around the midafternoon
16 break at any rate, so we're going to take the break.

17 We're going to have to address some legal issues, so
18 we'll make the break a little longer so that other personnel
19 can get the benefit that you're going to get. So let's assume
20 that will be 20 to 25 minutes. We'll send you back to the
21 jury room where you can relax there.

22 The fact that you get a little longer break doesn't
23 mean any of the rules change. Continue to keep an open mind
24 and do not discuss the case amongst yourselves or with anyone
25 else you may run into in the back.

PROCEEDINGS

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1 We'll come and get you as soon as we can.

2 (Jury exits the courtroom.)

3 (Continued on next page.)

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1 THE COURT: The motions at the close of the
2 Government's case in chief.

3 MR. ROSS: Judge, I move that the Government's case
4 is insufficient for your Honor to send to the jury and I'd ask
5 it be dismissed.

6 MR. RIOPELLE: On behalf of Ms. Cane, I move under
7 Federal Rule of Criminal Procedure 29 for a dismissal of the
8 case for insufficiency of evidence, particularly on the issue
9 of intent.

10 THE COURT: Does the Government wish to make a
11 record on their side?

12 MS. JONES: Your Honor, we believe that viewing the
13 evidence in the light most favorable to the Government and
14 drawing all inferences in our favor, there is more than enough
15 evidence to submit this case to the jury.

16 THE COURT: The Court will reserve decision at the
17 close of the Government's case in chief.

18 Mr. Riopelle, you're going to be up first?

19 MR. RIOPELLE: Yes. I have a very brief stipulation
20 to read and then a very brief witness and we, too, will rest.

21 THE COURT: I know based on our earlier conversation
22 Mr. Ross wants to defer on this, but since we are almost at
23 the close of Ms. Cane's case...

24 I understand from you, Mr. Riopelle, that at this
25 time, though pending what may develop on Mr. Discala's case,

PROCEEDINGS

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1 it is Ms. Cane's intention to exercise her right to remain
2 silent.

3 MR. RIOPELLE: That is my understanding, your Honor.

4 THE COURT: Ms. Cane, as you probably heard me say
5 earlier on, this is such an important right. While we
6 certainly believe that the attorneys will always represent to
7 the Court what their client has decided, it's so important
8 that I ask personally a couple of questions.

9 The first and most important thing that you must
10 understand is you have a right not only to remain silent but
11 also have the right to take the witness stand and testify in
12 your own defense. The other thing, obviously, under the Sixth
13 Amendment, you also have a right to have competent counsel
14 represent you.

15 So the first question is: Have you had a chance to
16 thoroughly discuss this decision of whether to remain silent
17 or to take the stand with your attorney?

18 DEFENDANT CANE: Yes.

19 MR. RIOPELLE: She has terrible laryngitis.

20 DEFENDANT CANE: Sorry.

21 THE COURT: I can hear her. If I can't, I'll yell
22 back at her.

23 And on the basis of your discussions and advice with
24 your counsel, have you reached a decision as to whether or not
25 you will remain silent or take the stand?

PROCEEDINGS

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1 DEFENDANT CANE: I'll remain silent.

2 MR. RIOPELLE: She said she'll remain silent.

3 She may have no other option.

4 THE COURT: And that's not because you have
5 laryngitis.

6 DEFENDANT CANE: That's correct.

7 THE COURT: Thank you very much.

8 Now Mr. Discala, I'll be asking you the same
9 question, so you've gotten a preview. In deference to
10 Mr. Ross' choice, I will wait towards the end of your case
11 before I ask you that.

12 DEFENDANT DISCALA: Thank you, your Honor.

13 THE COURT: Is there anything else we need to attend
14 to before we take our little break and come back?

15 MR. ROSS: The only thing for us is that Mr. Parker
16 has a flight later on in the day. I don't think there's going
17 to be any problem, we'll put him on first to make sure he
18 makes his flight.

19 THE COURT: Okay. Aside from the days I've
20 forecasted in advance we'd be leaving early, we haven't left
21 too early. So, we'll stay until we have to.

22 MS. JONES: Your Honor, I just wanted to ask a
23 procedural question.

24 Are we planning on sitting on Friday? We hope so,
25 but we just wanted to confirm.

PROCEEDINGS

3141

1 THE COURT: The short answer is if for some reason
2 we're still taking testimony, the answer would be no. And
3 under those circumstances, we will not be sitting Friday,
4 Monday, and Tuesday.

5 MS. JONES: Okay.

6 THE COURT: If, in fact, the jury has gotten the
7 case, we will allow deliberations to continue on Friday.

8 MS. JONES: Okay. Great.

9 MR. RIOPELLE: And will deliberations then continue
10 Monday and Tuesday?

11 THE COURT: No, not in my absence.

12 MR. RIOPELLE: Fair enough.

13 I am worried about what happens if we start with
14 summations on Thursday and get the first couple in. Are we
15 going to go break things up in that way, if we have to, or try
16 to just move it over?

17 THE COURT: Today is Monday. So, I don't know how
18 long we're going. I'm expecting that we will start summations
19 sometime tomorrow unless there's an exceedingly long witness
20 that I am unaware of.

21 MR. RIOPELLE: Okay. Tomorrow or Wednesday sounds
22 sensible to me, like it could happen, but life is
23 unpredictable.

24 THE COURT: Notwithstanding getting Mr. Parker on,
25 it is still our plan to have the charge conference this

1 evening.

2 MR. RIOPELLE: Yes. I have my notes and am ready to
3 go on that, Judge.

4 THE COURT: So, that will be out of the way.

5 So we'll be wherever Mr. Ross is with his witnesses.
6 And as I understand it at this point, we're not anticipating a
7 rebuttal case, but, of course, the Government can't answer
8 that until Mr. Discala's case is finished.

9 MS. JONES: That's correct, your Honor. We're not
10 anticipating it, but we'll see.

11 THE COURT: But it could be.

12 So, if, in fact, we don't have a rebuttal case and
13 Mr. Ross' witness list is pared down to where he thinks it is,
14 I would assume we will be reaching summations tomorrow.

15 MS. JONES: Great.

16 THE COURT: And we'll go from there.

17 And what I'll ask you and you can keep in mind and
18 think about, at some point during the charge conference or at
19 the end of the charge conference I'll ask you to give us a
20 ballpark on how long your summations are.

21 MR. ROSS: That's fine, Judge.

22 THE COURT: Just start to think in those terms. We
23 will see you in about fifteen.

24 MR. RIOPELLE: Thank you, your Honor.

25 (Recess taken.)

1 THE COURTROOM DEPUTY: Counsel for both sides are
2 present, including Defendants.

3 MR. HEIN: I wanted to raise one point prior to
4 Mr. Riopelle's witness Mr. Baker testifying.

5 We just wanted to ensure that Mr. Riopelle does not
6 elicit any instances of specific good conduct or any hearsay
7 from his client stated to Mr. Baker.

8 MR. RIOPELLE: I do not intend to elicit that
9 evidence, your Honor. And he's been prepared to respond to
10 appropriate questions, so I don't think that will be a
11 problem.

12 THE COURT: Following the methodology we used last
13 week.

14 MR. RIOPELLE: Yes. I suspect Mr. Hein will object
15 vociferously if we stray, which we do not intend to do, but
16 life being what it is...

17 THE COURT: That being the case, we can get the
18 jury.

19 MR. RIOPELLE: Thank you, your Honor.

20 MR. HEIN: Thank you, your Honor.

21 THE COURT: You're welcome.

22 As the wise old carpenter once told, Measure twice,
23 cut once.

24 (Jury enters.)

25 THE COURT: Be seated, please.

1 Counsel will stipulate that the jury is present and
2 properly seated?

3 MS. JONES: Yes, your Honor.

4 MR. ROSS: Yes, your Honor.

5 MR. RIOPELLE: So stipulated, your Honor.

6 THE COURT: Ladies and gentlemen, welcome back.
7 We're ready to resume this session. As you know, the
8 Government has rested. Now we're shifting to the defense
9 case. I will remind you of a couple of things I told you last
10 week.

11 Remember via accommodation -- the attorneys working
12 with each other, trying to make the case most efficient for
13 all concerned, especially you, the jury -- we began to hear
14 Ms. Cane's case last week when a couple of witnesses
15 testified. I'll remind you what I said at that time.

16 Defendants are not required to produce any evidence,
17 none whatsoever. And they certainly are not required to take
18 the stand. And if they do offer evidence in the form of
19 testimony or documents, they're still not required to take the
20 stand. And if a defendant chooses not to take the stand, a
21 jury may draw absolutely no inference whatsoever from that
22 decision.

23 So, with that, we now rejoin Ms. Cane's defense case
24 and ask Mr. Riopelle if he has another witness.

25 MR. RIOPELLE: I do, your Honor.

1 And I think the jury will be relieved to know that
2 it is a brief witness and our last witness. But because I
3 don't want to make them completely happy, I do have a short
4 stipulation to read before we get to that witness. So, we'll
5 start with the stipulation.

6 THE COURT: Very good.

7 MR. RIOPELLE: Which reads as follows: It is hereby
8 stipulated and agreed by and between the undersigned parties
9 that Zachary Cundiff, Mr. Cundiff, is employed by Wells Fargo
10 Bank, North America, herein after "Wells Fargo," in the legal
11 order processing department and is qualified to certify the
12 authenticity of business records of Wells Fargo and to testify
13 as a custodian of Wells Fargo's records.

14 In the course of his employment and in response to a
15 subpoena, Mr. Cundiff searched the records of Wells Fargo to
16 retrieve Wells Fargo's records relating to bank accounts
17 maintained by Cane Clark, LLP, Brian R. Clark, and Kyleen Cane
18 at Wells Fargo.

19 Mr. Cundiff's search of Wells Fargo's records found
20 no reports of suspicious activity filed by Wells Fargo with
21 the federal government in connection with the Wells Fargo
22 accounts maintained by Cane Clark, LLP, Brian R. Clark, and
23 Kyleen Cane.

24 This stipulation marked, KC-ST-1 is admissible in
25 evidence at trial and it is dated April 24, 2018, and signed

1 by all parties.

2 And with that, your Honor, I offer Defendants'
3 Exhibit KC-ST-1.

4 THE COURT: Received in evidence without objection.
5 (Defendant's Exhibit KC-ST-1, was received in
6 evidence.)

7 MR. RIOPELLE: Thank you, your Honor. And now
8 Ms. Cane calls David Baker to the witness stand.

9 (Witness sworn.)

10 THE COURTROOM DEPUTY: Please state your.

11 THE WITNESS: David Baker, D-A-V-I-D B-A-K-E-R.

12 THE COURTROOM DEPUTY: Thank you. Have a seat,
13 please.

14 THE COURT: Mr. Riopelle, you may inquire.

15 MR. RIOPELLE: Thank you, Judge.

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BAKER - DIRECT - RIOPELLE

3147

1 (Witness takes the witness stand.)

2 **DAVID BAKER,**

3 called by the defense, having been first duly sworn,

4 was examined and testified as follows:

5 DIRECT EXAMINATION

6 DIRECT EXAMINATION

7 BY MR. RIOPELLE:

8 Q Mr. Baker, where do you live?

9 A Las Vegas, Nevada.

10 Q And have you traveled here today to testify in this case?

11 A Yes.

12 Q Can you describe your education for us, sir?

13 A Sure. I have an undergraduate degree in political
14 science and a law degree from Golden Gate University.

15 Q And when did you obtain your law degree from Golden Gate
16 University?

17 A I believe 1994.

18 Q And what industry have you worked in since that time?

19 A The financial markets almost the entire time, less three
20 and a half years in self-storage.

21 Q During your travels, did you ever work as an intern with
22 the Securities and Exchange Commission?

23 A Yes, during my second year of law school for the Division
24 of Enforcement under Bob Singletary and then the Division of
25 Corporation Finance for a summer.

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BAKER - DIRECT - RIOPELLE

3148

1 Q And can you describe for the jury the types of work that
2 you have done in the securities industry?

3 A Sure. After graduating from law school, initially I was
4 a broker, then I was a hedge fund manager. I've been a hedge
5 fund manager for two different funds and recently starting my
6 third fund. I've been an investment banker conducting
7 alternative public transactions, I've been a proprietary
8 trader here in New York for First New York Securities. So, a
9 variety of different securities-related roles throughout my
10 entire career.

11 I've authored two patents issued by the Patent
12 Trademark Office in connection with group and sector rotation,
13 and they were the basis of a company that was eventually a few
14 years ago acquired by Fact Set Data Systems, a large New York
15 information company.

16 Q Was there ever a point in time when you worked at Merrill
17 Lynch?

18 A Yes, 1992, I believe -- it's been a long time -- for
19 three years at the 580 California Street office, which now I
20 understand has moved across the street to 600 California.

21 Q When you say California Street --

22 A In San Francisco, I apologize.

23 Q And what were you doing at Merrill Lynch during that
24 time?

25 A I was a retail broker before leaving and starting my

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1 first hedge fund.

2 Q Did you start your first hedge fund after leaving Merrill
3 Lynch?

4 A Yes.

5 Q And approximately when was that?

6 A 1994.

7 Q Now, what sorts of investments did the hedge funds you've
8 described make?

9 A Small cap and micro capitalization companies. So, market
10 capitalizations initially back then from --

11 MR. HEIN: Objection, your Honor, relevance.

12 MR. RIOPELLE: It goes to experience with my client.

13 THE COURT: Briefly.

14 Q Briefly.

15 A Investing in small and micro cap companies from
16 10 million to, let's say, 200 million.

17 Q And have you also from time to time worked as a
18 consultant to small or micro cap companies?

19 A Yes. For many years.

20 Q And did your role include helping them to raise capital?

21 A Yes, originate transaction, structure the capitalization,
22 introduce them to capital, et cetera.

23 Q And did some of those transactions involve something
24 called a "reverse merger"?

25 A Yes.

BAKER - DIRECT - RIOPELLE

3150

1 Q And can you very briefly describe what a reverse merger
2 is?

3 A A reference merger is a merger --

4 MR. HEIN: Objection, your Honor.

5 THE COURT: Again, just for background purposes?

6 MR. RIOPELLE: Yes.

7 A A merger whereby an acquiring company forms a subsidiary
8 company, the subsidiary company then acquires the target
9 company, and then after acquiring the target company the
10 subsidiary is absorbed by the target company.

11 And it's done instead of direct merger because,
12 number one, there's only one shareholder in the subsidiary
13 and, number two, it allows acquisitions sometimes whereby the
14 acquisition can be made where it normally wouldn't be able to
15 be made because of nontransferable assets or contracts in the
16 target company.

17 Q With that background, did there come a time when you met
18 my client, Kyleen Cane?

19 A Yes.

20 Q Mr. Baker, when was it that you met Kyleen Cane,
21 approximately?

22 A 2005.

23 Q How is it that you met my client, Kyleen Cane?

24 A We were working on a transaction for a company called
25 Handheld Entertainment and she become issuers' counsel.

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BAKER - DIRECT - RIOPELLE

3151

1 Q And have you worked with her in other transactions over
2 the years?

3 A Yes, maybe fifteen transactions, plus or minus.

4 Q And can you tell us the sorts of transactions that you
5 have worked with Ms. Cane on?

6 A Sure. Reverse reference mergers and other alternative
7 going-public transactions.

8 Q And did they require you to do intensive work with her?

9 A Yes, frequently. Sometimes daily, even.

10 Q And during the time that you were involved professionally
11 with Ms. Cane, did you have an opportunity to observe her
12 behavior as an attorney?

13 A Yes.

14 Q And was she ever an attorney -- who did she represent in
15 the deals that you worked with her on?

16 A Only the issuers, only the companies themselves. Not me,
17 not other people; the company itself.

18 Q Do you remain friendly with her today?

19 A Very. She's become a lifelong friend.

20 Q And do you continue to see her socially from time to
21 time?

22 A Yes.

23 Q About how often do you see Ms. Cane socially?

24 A Sometimes weekly, sometimes monthly. Depends on our
25 travel schedules.

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1 Q Now, based on your experience with Ms. Cane
2 professionally, do you have an opinion concerning her honesty
3 and integrity as a professional?

4 A Yes.

5 Q Can you tell the jury what that opinion is?

6 A She's the most honest, ethical, high-integrity person
7 that I've ever met. She's also the most generous and cares
8 about everybody.

9 MR. RIOPELLE: Thank you. I have no further
10 questions at this time.

11 THE COURT: Mr. Hein, do you have any cross?

12 MR. HEIN: Yes, your Honor.

13 CROSS-EXAMINATION

14 CROSS-EXAMINATION

15 BY MR. HEIN:

16 Q Mr. Baker, you testified that you have a close
17 relationship with Ms. Cane; is that right?

18 A Yes.

19 Q Is it fair to say that you wouldn't want to see her get
20 in trouble? Is that right?

21 A Absolutely.

22 Q And you're here to help her?

23 A I am.

24 Q Mr. Baker, you didn't have any involvement with a company
25 called Cubed, correct?

BAKER - CROSS - HEIN

3153

1 A Correct. I don't even know who that is.

2 Q And you didn't have any involvement with a company called
3 Northwest Resources?

4 A Correct. I don't know who that company is either.

5 Q And you have not seen any of the evidence in this case,
6 right?

7 A No, sir. My first knowledge of the case was just getting
8 the subpoena.

9 MR. HEIN: No further questions, your Honor.

10 THE COURT: Thank you, Mr. Hein.

11 Any cross by Mr. Discala?

12 MR. ROSS: No, your Honor.

13 MR. RIOPELLE: And no redirect.

14 Thank you, Mr. Baker.

15 THE COURT: Mr. Baker, you're excused. Safe trip
16 back to Las Vegas.

17 THE WITNESS: Thank you.

18 (Witness excused.)

19 MR. RIOPELLE: With that, Ms. Cane rests her case.

20 THE COURT: Thank you, Mr. Riopelle.

21 Another one of the building blocks, ladies and
22 gentlemen. Ms. Cane's defense case-in-chief has rested. We
23 now turn to Mr. Discala.

24 Mr. Ross, does Mr. Discala have a case?

25 MR. ROSS: Yes, your Honor. Mr. Discala will call

BAKER - CROSS - HEIN

3154

1 David Parker to the witness stand. Let me just go get him,
2 and Mr. Shroyer will do the direct.

3 THE COURT: Okay.

4 MR. SHROYER: Your Honor, Mr. Discala calls David
5 parker.

6 (Witness sworn.)

7 THE COURTROOM DEPUTY: Please state your first and
8 last name and spell it for the record.

9 THE WITNESS: David Parker, P-A-R-K-E-R.

10 THE COURTROOM DEPUTY: Thank you. Have a seat.

11 THE COURT: Mr. Shroyer, you may inquire.

12 MR. SHROYER: Thank you, your Honor.

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PARKER - DIRECT - SHROYER

3155

1 (Witness takes the witness stand.)

2 **DAVID PARKER,**

3 called by the Government, having been first duly sworn,

4 testified as follows:

5 DIRECT EXAMINATION

6 DIRECT EXAMINATION

7 BY MR. SHROYER:

8 Q Good afternoon, Mr. Parker.

9 A Good afternoon.

10 Q Mr. Parker, where do you live?

11 A I currently live in Las Vegas.

12 Q So, did you come into town to provide testimony in this
13 case?

14 A Yes, sir, I did.

15 Q And can I ask you, Mr. Parker, about your educational
16 background?

17 A My educational background?

18 Q Yes.

19 A I was originally in a trade school for my first -- what I
20 consider my first career. And then after that, near the end
21 of that career, I went to college. I completed all but I
22 think the last three classes of a bachelor's degree.

23 Q Okay. And what did you do after college?

24 A I retired as a career police officer and I converted over
25 and started working in marketing and internet with our family

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PARKER - DIRECT - SHROYER

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1 business.

2 Q I apologize, do I have it right, then, that you had a
3 career as a police officer and after you retired from that you
4 took courses in college?

5 A I began college about two years -- two or three years
6 before I retired and started working part-time for our family
7 business, which they had a marketing business.

8 Q Okay. Before you went into the marketing business, what
9 was your career up to that point?

10 A Up to the marketing business?

11 Q Before you got into marketing, what did you do?

12 A I was a police officer in Indianapolis for 20 years.

13 Q Can you tell me about the marketing company you're
14 involved with now?

15 A The marketing company I'm involved with now, I have a
16 consultancy called Thinks Network, which is a derivative of
17 our family business, which was Creative Direction out of
18 Indianapolis. The Thinks Network consultancy, which I do,
19 handles the one-on-one interactions with people to help them
20 prepare things for their marketing efforts.

21 Q So, do I have it right that it's a marketing consulting
22 company?

23 A Yes, sir.

24 Q Are there any other services that Thinks Consulting
25 provides?

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PARKER - DIRECT - SHROYER

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1 A We do due diligence and research on emerging products and
2 start-ups, usually when they have to do with technology.

3 Q Sir, in your business dealings with Thinks Consulting,
4 did you ever meet an individual named Max Khan?

5 A Yes.

6 Q About when?

7 A Probably about 2010, something like that.

8 Q And what kind of work did you do, if any, for Mr. Khan?

9 A For Mr. Khan, I would typically go in and do what I call
10 a due diligence, which I don't think that really is the
11 appropriate term but it's what I call it. I know due
12 diligence has another meaning in the business world, but I
13 would go in and I would research start-up companies that had a
14 technical aspect to them and issue a report to him on what I
15 found.

16 Q And to your knowledge, did Mr. Khan have a relationship
17 with an Abraxas Discala?

18 A Yes.

19 Q And I'd like to turn now to a company called Cubed. Are
20 you familiar with that company?

21 A Yes, I am.

22 Q And when did you become familiar with it?

23 A I received a phone call from Max Khan in October of 2013,
24 asking me if I would check a technology start-up company that
25 he and some business affiliates were thinking about investing

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PARKER - DIRECT - SHROYER

3158

1 in.

2 Q And did you do that?

3 A Yes, I did.

4 Q And how were you involved initially with doing this
5 research on Cubed?

6 A Initially, I took a look at -- initially, I looked at the
7 base product and the presentation to see what they had said
8 about the product. And then I looked at the social media
9 aspects and did some research on the back-end programming of
10 the product, which is a lot of what I'm really familiar with,
11 especially at that time. And then I interviewed the -- their
12 head of IT or the person that ran their IT team about how they
13 were programming the product and how it could expand, how it
14 could be handled on the internet, things of that nature.

15 Q Did there come a time that you went to Las Vegas?

16 A Yes.

17 Q And when did you go to Las Vegas?

18 A I engaged in a phone conversation with Steve White, who I
19 believe at that time was the president of Cubed, and agreed to
20 fly to Las Vegas to meet with him and his initial team to
21 discuss going onboard with them.

22 Q Did you meet Mr. White and his team?

23 A Yes, I did.

24 Q And at that time, how did you -- did you understand that
25 Mr. Discala had a relationship with the company?

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PARKER - DIRECT - SHROYER

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1 A Yes, I did.

2 Q And was that with the group of Mr. White and his team
3 with Mr. Khan on the investment end or something else?

4 A No. Mr. Discala -- as I understood, Mr. Discala was with
5 the Omni investor group in New York.

6 Q So, to your knowledge, at that time, they were not --
7 Mr. Discala was not an insider at the company?

8 A No, not at all.

9 Q And you mentioned that you prepared a report after your
10 initial research into the company; is that right?

11 A I'm sorry, could you say that again?

12 Q Sure. I'll speak in the microphone a little.

13 A Thank you.

14 Q Sure thing.

15 You said you prepared a report after looking into
16 the company.

17 A Yes.

18 MR. SHROYER: If I could show to the witness what's
19 been premarked as Defendants' Exhibit 3500-DP-3.

20 THE COURT: You may.

21 Q And Mr. Parker, if I can have you take a look at the
22 screen there, is this the report that you prepared?

23 A Yes, it is.

24 MR. SHROYER: And it might be easier, your Honor, if
25 I approach and hand him a copy.

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PARKER - DIRECT - SHROYER

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1 THE COURT: I don't know where the purpose is going,
2 Mr. Shroyer. He identified the report that he made.

3 MR. SHROYER: That's correct.

4 I'd move to put it into evidence at this time.

5 THE COURT: Is there any objection?

6 MR. BINI: No objection, your Honor.

7 THE COURT: No objection, received in evidence
8 without objection.

9 MR. SHROYER: May I approach, your Honor?

10 THE COURT: Sure.

11 (Defendant's Exhibit 3500-DP-3, was received in
12 evidence.)

13 Q Mr. Parker, the document that I just handed up to you, is
14 that the same document that appears on your screen?

15 A I believe so, yes.

16 Q Take a look -- it's probably easier for you to look at
17 the it that way -- to see if that's the report that you
18 prepared, if it is, indeed.

19 A Okay. I'm familiar with this now.

20 MR. SHROYER: If we could publish to the jury.

21 THE COURT: How many pages is it?

22 MR. SHROYER: Ten pages, your Honor.

23 THE COURT: Okay, publish.

24 (Exhibit published to the jury.)

25 Q If we look at the top here, Mr. Parker, what does that

PARKER - DIRECT - SHROYER

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1 say there?

2 A Executive summary.

3 Q All right. And above that?

4 A Crackpot/Cubed Marketing Plan.

5 Q Why was it that you came to create a marketing plan for
6 Cubed?

7 A It was agreed upon in my discussions with Steve White --
8 MR. BINI: Objection to discussions with Steve
9 White.

10 THE COURT: He said that's when it was, it came as a
11 result. He didn't tell us what the discussions are.

12 This resulted from a discussion with Steve White.
13 That question, the objection is overruled.

14 Q You can continue, Mr. Parker.

15 A As a result of business meetings, it was determined that
16 I would engage with Cubed to create a marketing plan and
17 marketing documents for them based upon the opinion that I
18 submitted to Mr. Khan and then, ultimately, to the rest of the
19 investors in New York.

20 Q Great. And just briefly, I just want to get a flavor of
21 what this document is about. If I could point you to the
22 section number two where it says "targeted users;" do you see
23 that?

24 A Yes, sir.

25 Q And under that, you put there "in the USA;" is that

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1 accurate?

2 A Yes.

3 Q And, so, this is a portion of the marketing plan about
4 how to target individuals in the USA; is that right?

5 A At the point this document was used, yes.

6 Q Okay. And below that, there's another section for
7 abroad, right?

8 A Yes.

9 Q And turning to Page 2, there's a specific area about the
10 Asia-Pacific region?

11 A Yes.

12 Q And Mr. Parker, this marketing plan that you devised,
13 this was a marketing plan for the actual product; is that
14 right?

15 A That is correct.

16 Q So, this marketing plan had nothing to do with securities
17 of the company or shares of stock or anything like that; is
18 that correct?

19 A That is correct, sir.

20 Q Did there come a time that you earned a salary from the
21 company known as Cubed?

22 A I received a monthly -- I was 1099.

23 Q And were you living in Las Vegas at the time?

24 A I was traveling back and forth between my original
25 hometown Indianapolis and Las Vegas. I was living out of a

PARKER - DIRECT - SHROYER

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1 hotel for several weeks at a time.

2 Q And who was taking care of your costs and your expenses
3 in making that commute?

4 A The Crackpot/Cubed company.

5 Q And about when was it that you began working on that 1099
6 basis for the company as opposed to for Mr. Khan?

7 A As I recall, I began actually working for them on the
8 first of December, 2013.

9 Q And when you started working there, can you tell us
10 approximately how many people were working at the Cubed
11 office?

12 A I believe three to four.

13 Q So, there were approximately three to four people working
14 in the office, but, based on your understanding, were there
15 other people based anywhere else that were working for the
16 company?

17 A Yes, the IT people, the people actually building the
18 product.

19 Q To your knowledge, approximately how many of those people
20 were there?

21 A To my recollection, it was about 40 developers in
22 Macedonia.

23 Q And other than the individuals who are working actually
24 in the Cubed office, were you aware of any contract work that
25 the company had, any relationships that the company had to

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PARKER - DIRECT - SHROYER

3164

1 other individuals who were working for the company on a
2 contract basis?

3 A I did not have personal knowledge of that other than
4 myself and the -- I actually saw the contract for the IT
5 people, their monthly contract.

6 Q All right. So, to your knowledge, there was such a
7 contract?

8 A With the IT people? Yes.

9 Q And that was separate from the team of engineers in
10 Macedonia?

11 A No, that is the Macedonia people.

12 Q Understood.

13 A Initially, yes.

14 MR. SHROYER: And if I could show something just to
15 the witness, please.

16 THE COURT: You may.

17 Q Showing you another document, Mr. Parker, do you
18 recognize this document?

19 A Yes, I do.

20 Q And can you just describe what it is?

21 A Yes. Not in much --

22 MR. BINI: I'm going to object to the relevance of
23 this additional document, which is cumulative of the last one.

24 THE COURT: Sustained.

25 MR. SHROYER: Your Honor, the timeframe and the

PARKER - DIRECT - SHROYER

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1 continuing work that Mr. Parker was doing for the company
2 would be the relevance of the document.

3 THE COURT: You can ask him if he continued his
4 work. The document itself -- frankly, I would have sustained
5 the objection to the original one, but go ahead ask him if he
6 continued.

7 MR. SHROYER: Sure thing. Thank you, your Honor.

8 Q Mr. Parker, did you continue to work for Cubed?

9 A Yes.

10 Q For approximately how long?

11 A Officially until February 27.

12 Q During that time --

13 THE COURT: Of what year, Mr. Parker?

14 THE WITNESS: I'm sorry, sir. February 27 of 2014.

15 Q During that time, did you take part in preparing any
16 documents that would be presented to investors?

17 A Yes, I did.

18 MR. SHROYER: If I could show just to the witness.

19 Q Do you recognize this document?

20 A Not by the size that's showing up on the screen.

21 Q It is zoomed in a bit.

22 Does that help you recognize this document?

23 A Yes. I believe I played a part in putting that together.

24 MR. BINI: Your Honor, I'm going to object to
25 relevance now to 3500-DP-8.

PARKER - DIRECT - SHROYER

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1 THE COURT: I concur.

2 MR. SHROYER: Your Honor, this document is going
3 to -- I believe that the testimony will show that there were
4 revenue projections, contracts that were being contemplated by
5 the company, by the insiders in the company, by the CEO that
6 show --

7 THE COURT: If you want to ask him -- the best
8 evidence of what he found is what he's going to tell you.

9 MR. SHROYER: Okay, your Honor.

10 At this point, based on this testimony, I would ask
11 that 3500-DP-8 be moved into evidence?

12 MR. BINI: Objection, relevance.

13 THE COURT: Sustained.

14 Q Mr. Parker, did you --

15 THE COURT: Do you want to talk to me at sidebar,
16 Mr. Shroyer?

17 MR. SHROYER: Yes, your Honor.

18 (Continued on the next page.)

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SIDEBAR

3167

1 (The following occurred at sidebar.)

2 MR. SHROYER: Your Honor, this document --

3 THE COURT: Why do you think it's relevant? To
4 what?

5 MR. SHROYER: A large portion of the Government's
6 case is based on the proposition that these businesses aren't
7 real businesses, that they're empty shells, they never had any
8 value, and, A, this witness is on the stand to show that
9 that's not true, and, B, he can also help to show that even if
10 the Government's proposition is true, that there were steps
11 taken by the company insiders to hide that fact not just from
12 the public but individuals on the outside, such as
13 Mr. Discala.

14 THE COURT: The "shell."

15 MR. SHROYER: They made the argument -- I shouldn't
16 use the word "shell," that these companies after they went
17 through the reverse merger --

18 MR. BINI: This wasn't a reference merger. It's
19 intellectual property purchase.

20 MR. SHROYER: Semantics.

21 That these companies, after they came out of the
22 transactions that turn them into public entities, that those
23 entities, Cubed, CodeSmart, the Staffing Group, were not real
24 companies. Now, Mr. Parker has already demonstrated to
25 whatever extent that that's not true, that there was a real

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1 company with a real product doing a real business.

2 Now, this next portion of testimony will demonstrate
3 that even if that was true, that there were steps taken by the
4 insiders, the CEO of the company and the people who were based
5 in Las Vegas, to hide the fact that these were empty companies
6 from individuals on the outside, such as Mr. Discala.

7 MR. BINI: Your Honor, the Government has not argued
8 that Crackpot is not a real company. We've argued that
9 Northwest Resources had fake shareholders that were used and
10 then became Cubed fake shareholders so that the conspirators
11 had complete control of the stock because of this market
12 manipulation. That was the focus of the inquiry and facts.

13 THE COURT: As I understood the proof, there's never
14 been a question in the Government's case that that application
15 has potential.

16 MR. SHROYER: There's certainly been argument that
17 the company was overvalued and that the stock price --

18 THE COURT: We're not getting into value. We're not
19 getting into value. We're not going to have a mini on the
20 value of the Cubed.

21 MR. SHROYER: Understood.

22 THE COURT: Okay.

23 MR. SHROYER: Thank you.

24 THE COURT: That's why I was surprised that the
25 first document wasn't objected to.

SIDEBAR

3169

1 MR. BINI: I should have objected to that. Sorry,
2 your Honor.

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4 (Continued on the next page.)

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PARKER - DIRECT - SHROYER

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1 (Sidebar ends; in open court.)

2 BY MR. SHROYER:

3 Q Did you play any part in creating revenue projections for
4 Cubed?

5 A Yes, I did.

6 Q And to your knowledge, did Mr. Discala play any part in
7 creating revenue projections for Cubed?

8 A Creating revenue projections? No.

9 Q Shifting gears just a little bit, when you first started
10 at Cubed, to your knowledge, was there anybody at the company
11 who was overseeing the financials of the company?

12 A To my knowledge, no.

13 Q At some point, did that change?

14 A Yes.

15 Q And who was the individual who was brought in to oversee
16 the financials of the company, if you know?

17 A Yes, I do. The person -- I'm trying to stick to what
18 I -- just what I know.

19 The person that was actually selected to come in and
20 handle the day-to-day financials, her name was Celeste Jolie
21 (phonetic).

22 Q And it was -- as you sit here now, sir, do you know the
23 impetus for bringing that individual into the company?

24 Why was she brought in?

25 A She was brought in because she was a friend of Steve

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PARKER - DIRECT - SHROYER

3171

1 White.

2 Q Now, did there come a time that you left the company?

3 A Yes.

4 Q And why did you leave the company?

5 A I left the company because I felt that -- I felt that
6 they -- I felt that they could not --

7 Q I don't mean to cut you off.

8 Could you just define "they"?

9 A Yes. I thought that I could not work with the Whites or
10 their group in Las Vegas.

11 Q And why was that?

12 A I felt that they were dishonest.

13 Q Mr. Parker, when you left the company, did you have any
14 chance or did you tell AJ Discala about your feelings about
15 the way the company was being run internally?

16 A No.

17 Q And, sir, how many times, if at all, have you met
18 Mr. Discala?

19 A I met Mr. Discala by -- in a phone conference, I believe,
20 before I -- when the product was being introduced. He was on
21 a phone conference. And I met him I believe one time at the
22 Downtown Grand when everybody was coming in for, like, a
23 product launch meeting.

24 Q Is it fair to say you don't have a personal relationship
25 with Mr. Discala?

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1 A No, I do not.

2 MR. SHROYER: Thank you. Nothing further.

3 THE COURT: Who is handling for the Government?

4 MR. BINI: Mr. Bini for the Government.

5 THE COURT: Okay, Mr. Bini.

6 CROSS-EXAMINATION

7 CROSS-EXAMINATION

8 BY MR. BINI:

9 Q Mr. Parker, you worked for Crackpot from, if I understand
10 it, sometime in 2013 until was it February 27, 2014?

11 A I believe it was February 27, 2014, yes. I believe, as I
12 recall, sir, I made a verbal agreement with Steve White on
13 November 24 of 2013 to start the following week and then I
14 ended up officially leaving February 27.

15 Q Okay. And you were paid as a 1099. You were a
16 contractor.

17 A Yes, sir.

18 Q But Max Khan had brought you in; is that right?

19 A Yes.

20 Q And how much were you paid, approximately, during that
21 period?

22 A I was paid by the Cube. I was paid \$6,000 a month.

23 Q And you testified earlier you had a background in law
24 enforcement, right?

25 A Yes.

PARKER - CROSS - BINI

3173

1 Q In fact, you had some background in white collar crime,
2 right?

3 A Yes, sir.

4 Q And did you come across pump and dumps in your training
5 as a police officer in white collar crime?

6 A You know, no. Most of the white collar crime training,
7 it was kind of before that time period.

8 Q Okay. But fair to say, sir, you really know nothing
9 about the trading of Cubed, right?

10 A That is correct. Nothing at all.

11 Q In fact, when the defense first contacted you, that's why
12 you told them you're not sure you'd be a good witness in this
13 case, right?

14 A That is correct.

15 Q And, sir, you don't know anything about Northwest
16 Resources, right?

17 A The original Cubed company? No.

18 Q And you don't know about the 30 shareholders that
19 controlled all the free-trading shares of that company, right?

20 A No, I do not.

21 Q And you don't know about the 30 or so shareholders who
22 control all the free-trading shares of Cubed, correct?

23 A True.

24 Q Fair to say you really know nothing about the facts in
25 this case?

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PARKER - CROSS - BINI

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1 MR. SHROYER: Objection, your Honor.

2 THE COURT: Sustained.

3 Q Sir, you haven't heard any of the evidence that's been
4 presented to this jury, right?

5 MR. SHROYER: Objection, your Honor.

6 THE COURT: Overruled.

7 Q That means you're allowed to answer.

8 A Sorry, I don't hear well.

9 Q I'll ask again. You don't know any of the evidence
10 that's been presented to this jury in this case, correct?

11 A That is correct.

12 MR. BINI: No further questions.

13 THE COURT: Any cross by Ms. Cane?

14 MR. RIOPELLE: No, your Honor.

15 THE COURT: No further redirect.

16 MR. ROSS: Your Honor, at this time, we'll call --

17 THE COURT: Mr. Parker, you're excused. Thank you
18 very much. Safe trip back to Las Vegas.

19 THE WITNESS: Thank you.

20 Your Honor, should I leave this here?

21 THE COURT: You can leave it there. Mr. Shroyer
22 will pick it up.

23 (Witness sworn.)

24 THE COURTROOM DEPUTY: Please state your first and
25 last name.

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PARKER - CROSS - BINI

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1 THE WITNESS: George Eric Engstrom, G-E-O-R-G-E
2 E-R-I-C E-N-G-S-T-R-O-M.

3 THE COURTROOM DEPUTY: Thank you. Have a seat,
4 please.

5 THE COURT: Mr. Shroyer.

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1 (Witness takes the witness stand.)

2 **ERIC ENGSTROM,**

3 called by the defense, having been first duly sworn,

4 was examined and testified as follows:

5 DIRECT EXAMINATION

6 DIRECT EXAMINATION

7 BY MR. SHROYER:

8 Q Good afternoon, Mr. Engstrom.

9 A Good afternoon.

10 Q Mr. Engstrom, can I ask you, what's your educational
11 background?

12 A Certainly. I graduated from high school when I was 16
13 from a Baptist Christian school. I then went to a community
14 college for a year before I graduated with a general studies
15 degree. And from there, I went to a university in pursuit of
16 a bachelor's degree but I dropped out. I transferred as a
17 junior and I dropped out midway through my junior year because
18 I was making more money in my profession than my instructors
19 were.

20 THE COURT: That's a safe commentary about our
21 society, I think.

22 THE WITNESS: It was still probably a mistake, your
23 Honor.

24 Q Mr. Engstrom, can you describe for us your professional
25 background?

ENGSTROM - DIRECT - SHROYER

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1 A Yes. After leaving college I worked in Eastern
2 Washington mostly as a software contractor, and then I was
3 recruited to Western Washington, which would be the Seattle
4 area; actually Redmond, but you might as well think of it as
5 Seattle. I turned down a job from Microsoft, who had
6 recruited me to come there because they offered me stock
7 options in lieu of \$3,000 of extra salary. That was the first
8 time I lost lots of money by not taking stock options.

9 Two and a half years later, they offered me a job
10 again and I took it, as an evangelist, because they wanted
11 somebody who could write code and, in their words, had a
12 personality. I'm not sure how to take that either. But one
13 thing led to another, and I ended up co-inventing a thing
14 called Direct X, which turned into the Xbox and now is the
15 technology behind HoloLens. So, myself and two other
16 individuals made that from the beginning.

17 As a result of that success, I was put in charge of
18 what was called at the time multimedia at Microsoft. You
19 would probably think of that mostly as DVD playback on
20 Windows. I was the person that thought that people would want
21 to watch movies on planes. I know that sounds kind of amazing
22 today that anyone thought that was heretical. I made a
23 browser from there that would allow you to do NFL-style visual
24 effects on the web in 1998.

25 That led me to -- well, it was called Netscape

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ENGSTROM - DIRECT - SHROYER

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1 Killer, and that was the anti-trust trial time. So, between
2 that and wanting to make sure that any movie you had could
3 play on your PC, I wasn't -- "invited" would be the word I
4 would use, to become a witness for Microsoft in the anti-trust
5 trial.

6 MS. JONES: Objection, relevance.

7 THE COURT: Just giving his background.

8 A So, I quit Microsoft largely after that. I did some due
9 diligence for Microsoft. Probably the one you'd know the most
10 is Hotmail, and I was responsible for stopping a \$3 billion
11 acquisition that Mr. Steve Ballmer, the CEO, still thanks me
12 for today.

13 I then started several companies, but the one that I
14 think is most interesting is the Wildseed company, which was
15 the first consumer-based smartphone. It was designed to be
16 entertaining more than just a phone that got your e-mail.
17 That was in 2000.

18 We sold the company to AOL in 2005 for about
19 \$280 million.

20 I then went back into the -- I was SVP at AOL for a
21 couple of years and then rejoined Microsoft in 2009, after the
22 2008 conditions in the market left there no -- there was no
23 venture capital to fund start-up companies.

24 And since leaving Microsoft in 2014, I have been
25 building internet of things, technologies, for my various

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ENGSTROM - DIRECT - SHROYER

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1 companies.

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3 (Continued on next page.)

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1 CONTINUED DIRECT EXAMINATION

2 BY MR. SHROYER:

3 Q Okay. And at some point around that time that you
4 mentioned you stopped working for Microsoft, maybe a bit
5 earlier, did you become aware of a company known as Scanbuy?

6 A Yes. I need to pop back a little back. The CEO was Mike
7 Wehrs at the time. Mike Wehrs I knew from Microsoft. He was
8 also an associate partner of the company that invested
9 Wildseed. And I had subsequently hired him when I was at AOL
10 to help me with mobile marketing, that was his expertise. He
11 eventually became the president, I think, of the mobile
12 marketing association.

13 I needed some technology that Scanbuy had, mostly
14 for my wife's company, so I called Mr. Wehrs and asked him if
15 he would help me. He said yes. So we started talking about
16 that.

17 And I subsequently changed groups at Microsoft, this
18 was while I was at Microsoft, and ended up with a technology
19 called Microsoft hag (ph), which was a scanning technology
20 different from bar codes and QR codes. Microsoft research had
21 invented it and no longer wanted it, but we had critical
22 corporate customers who relied on it. Mike Wehrs and I worked
23 out a deal where Microsoft would have transfer it to him if he
24 would agree to take care of those customers. And in exchange
25 for that, I became an adviser on -- not an adviser, I need to

ENGSTROM - DIRECT - SHROYER

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1 be very accurate -- I was a board observer in my capacity as a
2 Microsoft general manager.

3 Q Approximately when was that that you took on that role
4 with Scanbuy?

5 A 2013, it might have been as early as the fall of 2012.
6 It didn't seem very significant at the time, I'm sorry.

7 Q Did there come a time through your involvement with
8 Scanbuy that you met an individual named AJ Discala?

9 A Yes. Mr. Wehrs said I should meet AJ who was helping him
10 put together a funding rep. I was invited by Mr. Wehrs to
11 dinner with Mr. Discala. And there were three or four other
12 gentlemen, I'm terrible with names and I'm face-blank, please
13 forgive me. One of them was a Ford trustee, that's the only
14 thing I remember about the other four.

15 Q Did you learn of a company called Cubed?

16 A I did. Mr. Wehrs knew about Cubed. And perhaps that was
17 the reason he brought me to dinner, as much as anything. The
18 browser I spoke of in 1998 was a 3D powered browser that did
19 things very much like the Cube did. We have a much larger
20 development team, so it did more things than that, but it had
21 a lot of web-based 3D graphical user interfaces. AJ said,
22 Wow, you know something about that. And I said, I know a lot
23 about 3D.

24 MS. JONES: Objection.

25 THE COURT: Sustained.

1 Q Leave out things that other people said.

2 A I'm sorry.

3 Q Did there come a time that you became involved with the
4 company known as Cubed?

5 A Yes. As a result of that dinner, I was asked to do some
6 due diligence.

7 Q And did you do that due diligence?

8 A I flew to Las Vegas and met with the team. And let's
9 see, in that process I met Steve White, his son, a man named
10 JT, and his brother, and an attorney named Kyleen Cane helped
11 me with all the MBAs and et cetera, stuff I'm supposed to sign
12 before I look at a company.

13 Q Did you have a chance to review the product?

14 A I did, and the team.

15 Q And what was your feeling about the company after those
16 meetings?

17 A My feeling was that the team was green, but that was an
18 easy problem to solve. That's something I do all the time.
19 Their passion for their product and the user interface inside
20 was quite exciting, especially from my experience in mobile.
21 One of the most interesting things is phone numbers are unlike
22 static, unlike URLs, everyone can say whatever they want about
23 you on your phone number --

24 MS. JONES: Objection. Relevance.

25 THE COURT: I'm going to allow that answer. Move

E. ENGSTROM - CROSS - MS. JONES

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1 on, Mr. Shroyer.

2 BY MR. SHROYER

3 Q How long did your engagement with Cubed last?

4 A All day, and then I subsequently wrote a report.

5 Q And based on your interaction with Cubed was there any
6 potential for synthesis these or any deal with the company
7 that you were involved in before Scanbuy?

8 A Yes. It was my understanding that Scanbuy and the Cubed
9 were interested in doing something together. It is my
10 understanding that the number of installed users, installed
11 applicants, that Scanbuy had and their number of active users,
12 if they could drive up the engagement, would have been worth a
13 substantial amount of money.

14 Q Was there some potential benefit that Cubed would have
15 had for standby and Scanbuy may have had for Cubed?

16 MS. JONES: Objection. Relevance.

17 THE COURT: Sustained.

18 MR. SHROYER: Nothing further, your Honor.

19 THE COURT: I guess, Ms. Jones.

20 MS. JONES: Yes, your Honor.

21 THE COURT: You may inquire.

22 MS. JONES: Thank you, your Honor.

23 CROSS-EXAMINATION

24 BY MS. JONES:

25 Q Good afternoon, Mr. Engstrom. So is it accurate to say

E. ENGSTROM - CROSS - MS. JONES

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1 you met Mr. Discala for the first time in or about May 2014?

2 A I met him at the dinner, that may have been May or June,
3 sorry, but yes.

4 Q At that time what were you doing for a job?

5 A I was interviewing. I was trying to decide at the moment
6 whether I should go back into start ups, I was actually
7 interviewing Bloomberg at the time.

8 Q So you may have met Mr. Discala you said in May or June
9 of 2014?

10 A Yes.

11 Q And isn't it correct that by June of 2014 you were
12 referring to Mr. Discala as your new partner in an e-mail to
13 Ted Stockwell?

14 A Probably.

15 Q And isn't it true that you indicated to Mr. Stockwell
16 that Mr. Discala was going to help you with your Microsoft
17 situation, correct?

18 A He did say that, yes.

19 Q And that situation was that Microsoft had fired both you
20 and Mr. Stockwell at the end of 2013, correct?

21 A Actually they fired me on January 15, 2014; but no reason
22 to quibble.

23 Q And by early July 2014, your opinion expressed in an
24 e-mail was that Mr. Discala and Mr. Wexler were great men and
25 you were pleased to be dealing with them?

1 A That was absolutely my impression at the time, yes.

2 Q By July of 2014 Mr. Discala is trying to get you on the
3 Board of Cubed, correct?

4 A Yes, and Scanbuy.

5 Q Mr. Discala offered you stock options to be on the board
6 of Cubed?

7 A Yes, that is normal for me.

8 Q Do you know if these were stock options for free-trading
9 stock or restricted stock?

10 A So to be pedantic, in my world restricted stock would
11 mean that I actually got the shares. And when I heard stock
12 options, that would be like what I got at Microsoft, which was
13 an option to buy in the future at the strike price that they
14 were branded at. The difference being restricted stock is
15 granted at a price of zero.

16 Q So what was your understanding as to what you would get
17 if you went on the board of Cubed?

18 A He used the word options, so I took it as my strike price
19 at the time.

20 Q That you would be able to buy unrestricted stock at a
21 strike price?

22 A Over a vesting schedule in the future.

23 Q Had you negotiated the amount of stock options you were
24 going to get?

25 A No.

1 Q Had you negotiated the strike price?

2 A The strike price is never negotiated. In my -- I don't
3 know, I can't say never. Strike prices for options are
4 generally some day in the future the market is at. In my
5 case, it was October 1st, 1991, for Microsoft.

6 Q Isn't it correct that in the middle of approximately
7 middle July 2014 you traveled to Connecticut and spent the
8 night at Mr. Discala's house?

9 A Yes, because the hotel situation in the town he lives in
10 is terrible. I arrived at midnight.

11 Q Because you had a meeting planned with Mr. Discala,
12 correct?

13 A Yes.

14 Q This was within days of Mr. Discala being arrested,
15 correct?

16 A I'm not sure which side of the days it was. But I'm not
17 disputing that I saw him very soon before and after he was
18 arrested.

19 Q When Mr. Discala was arrested, you had known him for
20 maybe six weeks?

21 A Yes.

22 Q And after Mr. Discala was arrested, you served as the
23 interim CEO of Omni View?

24 A Yes. In an attempt to -- everyone was afraid --

25 Q Mr. Engstrom, it's a yes or no question.

E. ENGSTROM - CROSS - MS. JONES

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1 A Well, I feel like it requires some explanation. Because
2 I wasn't just the interim CEO, it was limited specifically to
3 doing things necessary to get the investors' cash back. I
4 couldn't do anything else for Omni View, only work to get
5 their cash back. Because no one would touch the cash. And
6 those investors should have gotten the money back, and they
7 got their money back.

8 Q You're talking about Scanbuy investors?

9 A Yes.

10 Q Not Cubed?

11 A I had nothing to do with Cubed investors.

12 Q And not all Scanbuy investors got their money, correct?

13 A That is correct. Some of them refused take their money
14 back. And others I couldn't get it back because the
15 Government took it back in a civil forfeiture.

16 Q There wasn't money to pay the investors back, is that
17 what you're saying?

18 A One set of investors -- there are three sets. One set of
19 investors got three-and-a-half million dollar for them to take
20 back. Another set chose to leave their money in Scanbuy
21 because they were already invested in Scanbuy. The third set
22 didn't get the money back because the Government took it in a
23 civil forfeiture.

24 Q From Omni View.

25 A Yes, that's where the money was sent to, to go to

E. ENGSTROM - CROSS - MS. JONES

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1 Scanbuy.

2 Q Mr. Engstrom, you also had been the CTO of Dounya
3 Discala's company, bevRage, correct?

4 A I'm -- one of the things Circle does is it provides a CTO
5 as a service. So yes, I was the CTO in the form of a service
6 to, not really Dounya, Dounya Discala was -- it's a Loeb
7 Enterprise Company. I still work for them. They changed the
8 name to 3x3 Insights.

9 Q You refer to them, the Discalas, as your virtual family,
10 correct?

11 A Yes.

12 Q You're here to help Mr. Discala, correct?

13 A I'm here to tell the truth, ma'am.

14 Q And you had no involvement in any of these stock trades
15 that went on with respect to Cubed; is that correct?

16 A Absolutely correct.

17 Q And were you aware that Kyleen Cane held all the
18 free-trading shares of Cubed?

19 A No, I was only aware she was counsel.

20 Q You're not aware of any of the evidence that's been
21 presented to the jury in this case?

22 A No.

23 MS. JONES: No further questions.

24 THE COURT: Any cross by Mr. Riopelle?

25 MR. RIOPELLE: No questions for Ms. Cane.

E. ENGSTROM - CROSS - MS. JONES

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1 THE COURT: Mr. Shroyer, any redirect?

2 MR. SHROYER: No, your Honor.

3 THE COURT: You're excused. Let's see counsel at
4 sidebar.

5 (Whereupon, the witness was excused.)

6 (Continued on the next page.)

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SIDEBAR CONFERENCE

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1 MR. CHENG: Ms. Eckhart is available, but we have
2 revised the schedules and we just don't have the ability to
3 the print them. I was going to suggest we start with her
4 first thing in the morning. I could provide within the
5 next -- the electronic, provide what we're going to use that's
6 been revised. We can just move to the jury charge conference.

7 MS. JONES: Why don't we get started, if we can.

8 THE COURT: Why don't you figure on to about 20
9 minutes to 30 minutes?

10 MR. CHENG: We can go through her background.

11 MR. HEIN: How long do you anticipate the witness?

12 MR. CHENG: Taking out the schedules, say an hour
13 maybe a little less.

14 MS. JONES: How many exhibits are you planning on
15 introducing through her?

16 MR. CHENG: I reduced it down to, I don't recall the
17 number, 12 to 15.

18 MS. JONES: Do you have print outs?

19 MR. CHENG: I revised them so I have don't have the
20 ability to print, which is why I'm asking to move to tomorrow.

21 MS. JONES: We can start and I guess we'll do the
22 rest tomorrow morning.

23 THE COURT: Why don't we do this. Why don't you
24 start and then when you get to the point where you you're
25 going want to use the substantive exhibit down the road you'll

SIDEBAR CONFERENCE

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1 say, we reached a break point.

2 (End of sidebar conference.)

3 (Continued on the next page.)

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H. ECKHART - DIRECT - MR. CHENG

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1 (In open court.)

2 THE COURT: Is there another witness?

3 MR. ROSS: Mr. Discala is going to call Haley

4 Eckhart.

5 (Witness takes the witness stand.)

6 HALEY ECKHART, called as a witness, having been first duly

7 sworn/affirmed, was examined and testified as follows:

8 THE WITNESS: I do.

9 COURTROOM DEPUTY: State your first and last name.

10 THE WITNESS: Haley Eckhart, H-A-L-E-Y,

11 E-C-K-H-A-R-T.

12 THE COURT: Mr. Cheng, you may inquire.

13 MR. CHENG: Thank you, your Honor.

14 DIRECT EXAMINATION

15 BY MR. CHENG:

16 Q Good morning.

17 A Good morning -- good afternoon.

18 Q Good afternoon. Can you tell us what your occupation is?

19 A I'm a CPA and I do forensic accounting and economic
20 damages calculations.

21 Q With where is your place of employment?

22 A I'm work at Freeman and Mills, Incorporated. I am Vice
23 President and a shareholder of the firm.

24 Q How long have you held that position?

25 A I've had that position since 2005, but I've been with the

H. ECKHART - DIRECT - MR. CHENG

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1 firm mostly since 1996, so it's going on 22 years.

2 THE COURT: Where what is the firm located?

3 THE WITNESS: In Los Angeles California.

4 Q Where did you work prior to that?

5 A I worked at Ernst & Young, also in Los Angeles,
6 California.

7 Q Can you briefly describe the subject matter of your
8 specialty?

9 A As I mentioned, I do forensic accounting and expert
10 witness work. And I work on litigation matters, both civil
11 and criminal, for companies and individuals. Companies as
12 small as a sole proprietor mom-and-pop company, to Fortune 500
13 companies, doing consulting and expert witness work.

14 Q What academic degrees do you hold and where and when were
15 they obtained?

16 A I graduated in 1992 from the University of California at
17 Santa Barbara. And my degree was a Bachelor's of Arts in
18 business economics with an emphasis in accounting.

19 Q Are you licensed in any fields?

20 A As a CPA licensed by the State of California to practice
21 as a CPA, or Certified Public Accountant. I'm also licensed
22 in the state of Arizona, I had lived there for a few years.

23 Q How long have you held those licenses?

24 A My California my licensed I got that in 1997, I believe.
25 In Arizona it's sometime in the early 2000s.

1 Q Do you have any other credentials?

2 A I'm also a Certified Fraud Examiner or CFO. That's a
3 credential I obtained through the Certified Fraud Examiners, a
4 world-wide organization.

5 Q What are the duties and functions of your current
6 position?

7 A As I mentioned, I do litigation consulting and expert
8 witness work doing forensic accounting and damage
9 calculations.

10 Q Are you a member in any professional associations or
11 organizations?

12 A I'm a member in the American Institute of Certified
13 Public Accountants, AICPA. As well as the California Society
14 of CPAs, and the Arizona Society of CPAs. I'm also a member
15 of the Association of Certified Fraud Examiners. And with the
16 California Society of CPAs, I'm the recent past Chair of its
17 economic damages section.

18 Q What type of matters do you consult on or have you
19 consulted on?

20 A I've worked on matters, as I mentioned, in both civil and
21 criminal cases. In civil cases it could be anything from a
22 personal injury, to a huge business interruption case for a
23 Fortune 500 company that sustained huge losses after hurricane
24 Katrina. I've also done consulting work both for and working
25 for the Government, the SEC, and the DOJ in certain criminal

H. ECKHART - DIRECT - MR. CHENG

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1 matters back in the early 2000s and/or middle 2000s. And also
2 criminal cases defending the individuals in those, I guess,
3 stock option, back dating cases, and revenue recognition
4 cases.

5 Q Have you ever testified as an expert in forensic
6 accounting before?

7 A Yes, I have.

8 Q How many times?

9 A I've testified 34 times, 11 of those have been at trial.

10 MR. CHENG: Do you think this would be a nice time
11 to take a brake?

12 THE COURT: Yes. We've reached a break point in
13 this examination, ladies and gentlemen. I had ask Mr. Cheng
14 to alert me to when we would get to that break point and he
15 has, and I'm grateful for that.

16 We are going to recess for the evening. The usual
17 recess rules apply. And I will review them again for you.
18 Continue to keep an open mind. Don't discuss the case amongst
19 yourselves or with anyone else. Do not do over the recess
20 period any research, electronic or otherwise, touching on
21 anything related to the case, penalties, the issues, the
22 names. Do not, if you're on a social media platform, do not,
23 you're on radio silence. You're not to mention anything about
24 the case, your service as a juror, that you come to the
25 courthouse in Brooklyn, or anything that relates to directly

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1 or obliquely to the case. And lastly, to the extent there is
2 any media coverage, using that broad definition of media,
3 you're to shut it out. If it relates to this case, keep your
4 eyes, mind, ears closed to. I also urge you, as I do every
5 end of day, urge you to tune out any media accounts of other
6 proceedings for fear that you may hear something there that
7 might confuse you as to what your responsibilities are here.

8 All of those continued admonitions and with our
9 continued appreciation for your sacrifice and your patience,
10 we will bid you a pleasant evening. We'll see you tomorrow.
11 Return to the central jury room around 9:45 a.m. and we'll get
12 started as close as we can.

13 (Jury exits the courtroom.)

14 THE COURT: Ms. Eckhart, you may stand down. See
15 you tomorrow. Take a ten-minute break. Then we'll return and
16 distribute the hard copies of the charge as proposed, which
17 the clerk will mark as Court Exhibit 1. And the proposed
18 verdict sheet which the clerk will mark as Court Exhibit 1A.

19 (Whereupon, the witness steps down.)

20 (Continued next page.)

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PROCEEDINGS

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1 THE COURTROOM DEPUTY: All rise.

2 Court is back in session.

3 Counsel for both sides are present, including the
4 defendants.

5 THE COURT: Okay, ready to go.

6 MR. RIOPELLE: Yes, Judge. Because this is a
7 conference that deals with the charge and legal matters, I've
8 discussed with my client whether she would like to be excused,
9 and I think she can be excused under the rules, and I'd ask
10 that she be excused from the conference.

11 THE COURT: I absolutely agree, particularly with
12 the laryngitis.

13 MR. RIOPELLE: Thank you, Your Honor.

14 THE COURT: That applies to you, too, Mr. Discala.
15 It's up to you.

16 Okay. You can be seated. What we're going to do is
17 we're just going to go -- first we deal with the charge as
18 proposed, and to the extent that there's something else, by
19 the time we get to the end of the first part of the process
20 that has to be attended to, then we go to that.

21 Now what is the first part of the process? We will
22 go from front to back and without celebration or celebrity
23 side of the courthouse, whatever, whoever's got the first
24 objection on the lowest page, that's where we go, and then
25 we'll go to the next lowest page objection and we'll go from

1 there.

2 Just sing out if you an objection.

3 MR. RIOPELLE: Yes.

4 And, Your Honor, I will note that I had submitted
5 written proposals to the Court, which I see some of which are
6 incorporated, some of which are not. I have gone back to
7 those proposals, compared them to what we have here. And so
8 I'm ready to yodel about those.

9 THE COURT: Yes. So there was some minor
10 modifications from the exposure draft, so it's not like some
11 of your suggestions were incorporated into this draft that we
12 actually are holding the charge conference on.

13 MR. RIOPELLE: Right.

14 MR. BINI: Your Honor, Mark Bini for the government.

15 One note that I did not submit and I should have
16 submitted, but in reviewing ECF 601, I notice that there is no
17 aiding and abetting charge.

18 We had requested that because our substantive
19 counts, counts now Three through Ten, all charge 18 U.S.C. 2,
20 the aiding and abetting statute. So that's government's
21 request number seven in ECF 541 where we ask for the standard
22 aiding and abetting charges.

23 So I'll just -- I guess when we get to after Count
24 Three, the first substantive count, I'll just note it at that
25 point.

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1 THE COURT: Okay. I always charge the Sands anyway.

2 MR. BINI: Thank you, Judge.

3 THE COURT: But who has the lowest page of
4 objection?

5 What's your lowest page on the government side?

6 MR. BINI: So we would take aiding and abetting.

7 THE COURT: No, no, I mean with respect to the
8 charge as proposed, anything that's already in it, what's your
9 lowest page?

10 MR. BINI: We have no objections, Your Honor.

11 Oh, I'm sorry, I apologize. We actually do have a
12 couple of things where Mr. Riopelle has raised where we don't
13 disagree with the instructions that don't apply.

14 MR. RIOPELLE: I was going to say my first objection
15 is on page 29.

16 THE COURT: Anybody lower than 29?

17 MR. RIOPELLE: Anybody beat 29?

18 THE COURT: Sounds like 29 it is.

19 MR. CHENG: Come on down.

20 THE COURT: Do you have something before 29?

21 MR. BINI: No, I don't.

22 THE COURT: Let's everybody start at 29.

23 MR. RIOPELLE: Your Honor, I had proposed at the end
24 of this charge the following language, which I think in
25 fairness should be included as follows:

1 "In addition, I remind you that the government did
2 not play all of the wiretaps that were intercepted in the
3 case, and they played only excerpts from some of the wiretaps
4 that it did play. The law does not allow the defendants to
5 play wiretaps or excerpts from wiretaps, however, the law does
6 permit the defendants to argue that the wiretaps were played
7 by the government are insufficient to establish their guilt
8 beyond a reasonable doubt, and you may consider whether the
9 government has played all of the wiretaps, or produced all of
10 the text messages on a particular subject when deciding
11 whether the government has proven a particular defendant's
12 guilt beyond a reasonable doubt."

13 I think, Your Honor, in fairness that language
14 should be included. I note that you did not include it. I
15 will expect that you will adhere to that ruling.

16 THE COURT: Well, let me hear from the government.

17 MR. RIOPELLE: But I've made my objection.

18 MR. BINI: Your Honor, the government does object to
19 that additional language because it's in direct conflict with
20 no specific investigative techniques are required and that not
21 all evidence need be produced. And so the government would
22 request the instruction that Your Honor has proposed.

23 THE COURT: And, Mr. Riopelle, you didn't, I don't
24 recall and refresh me, you didn't have a *Sands* site for the
25 language, correct?

1 MR. RIOPELLE: That is correct.

2 Your Honor, the reason I think it is fair to include
3 some kind of language like this, is that, as the Court knows
4 from our first in limine motion, we were desperate to play
5 some of the wiretaps that the government did not want played.

6 You know, I recognize that as a general matter the
7 hearsay rule does not allow the defendants to offer this
8 evidence, and it does seem unfair to me to keep the fact that
9 the defense cannot offer this evidence from the jury.

10 The jury knows because they've heard it testified to
11 that there were thousands of calls intercepted and yet they've
12 heard only a couple of dozen here and they've heard only
13 excerpts from the calls.

14 I do not -- you know, I'm afraid that if the
15 government -- if the jury is not told that the defendants
16 cannot offer this evidence, that they will shift the burden to
17 us and hold us responsible for not offering that evidence.

18 And so for that reason, I think it's only fair to
19 instruct them that you can't do it.

20 THE COURT: You have your exception, of course,
21 Mr. Riopelle, but my charges, if anything, I know that the
22 government mudders I'm sure across the street of the number of
23 times I tell the jury that the defendant has absolutely no
24 burden.

25 MR. RIOPELLE: Yes. And I thank you for that,

1 Judge.

2 THE COURT: After page 29.

3 MR. RIOPELLE: My next objection is on 31.

4 THE COURT: Okay, you have to make your record.

5 MR. RIOPELLE: Well, you know, I did note --

6 THE COURT: And it's good for the court reporter.

7 Gives her more pages.

8 MR. RIOPELLE: 31, I think the charts and summaries
9 not admitted as evidence is not applicable in this case,
10 Judge. The charts and summaries that the Court has are all
11 admitted as evidence.

12 THE COURT: That was my recollection as well.

13 MR. BINI: Yes, Your Honor, the government agrees.

14 MR. RIOPELLE: So we can take that out? It's one
15 less thing to do, Judge.

16 THE COURT: Yes. Again, remember which sometimes if
17 you put "if applicable" probably should have an if applicable
18 there. In my mind, I didn't want to trust my mind.

19 MR. RIOPELLE: Exactly.

20 THE COURT: That was my recollection as well. If
21 it's easier to take it out than to try to put it in, I guess
22 we're going to find out in spades here, when we have to inject
23 the aiding and abetting one. Much easier to be over inclusive
24 in the first round.

25 MR. RIOPELLE: Agreed, Your Honor.

1 MR. BINI: Page 67 is my next --

2 MR. RIOPELLE: I'm at 43.

3 MR. BINI: Okay.

4 MR. RIOPELLE: I'm running at the score now, Judge.

5 THE COURT: That's okay.

6 You know they get you in the playoffs.

7 MR. RIOPELLE: On page 43, the grammarian in the
8 proposes is that the words "he or she is" be substituted for
9 "they are presumed to be innocent," because I think you have a
10 bad verb agreement there in the charge.

11 THE COURT: That's probably makes sense.

12 MR. BINI: No objection from the government, Your
13 Honor.

14 THE COURT: Evan is the scrivener, so he's going to
15 make this all...

16 We try to catch -- a couple of those I caught
17 myself.

18 MR. RIOPELLE: Well, you know, I taught grammar at
19 one point.

20 THE COURT: Wow. Does anybody teach grammar today?

21 MR. RIOPELLE: Yeah, I used to be able to diagram a
22 sentence.

23 THE COURT: You have to be on Medicare to know what
24 that means.

25 MR. RIOPELLE: Or if you went to Catholic school.

1 THE COURT: I went to public school.

2 MR. RIOPELLE: I did time.

3 MR. BOWMAN: Your Honor, page 43, I wonder if the
4 Court would consider saying "because he and she are presumed
5 to be innocent." We don't we can speak in the abstract.

6 THE COURT: I'm listening. This is Mr. Bowman's
7 amendment.

8 MR. BOWMAN: It's a small point but...

9 THE COURT: Anybody have a problem with it?

10 MR. RIOPELLE: Give me that one, again, Mr. Bowman?

11 MR. BOWMAN: "Because he and she are presumed to be
12 innocent."

13 MR. RIOPELLE: Yes, I have no problem with that.

14 MR. BINI: No objection from the government, Your
15 Honor.

16 THE COURT: Okay. Done.

17 MR. RIOPELLE: That takes us to 46.

18 THE COURT: Okay.

19 MR. RIOPELLE: Your Honor, where I propose that we
20 add language to the sentence about one third down the page
21 that ends with the word "information." This is about specific
22 investigative techniques are not required.

23 Where you say "the government need not utilize
24 specific investigative techniques or exhaustively pursue every
25 piece of information," I would add a comma and then insert the

1 language "or call every witness that was interviewed, or play
2 every call that was recorded, or admit every text message
3 seized, period."

4 That sort of draws the jury's attention to specific
5 evidence in this case, and that was why I thought it would be
6 useful.

7 THE COURT: The government?

8 MR. BINI: We prefer it as proposed. I think this
9 is the *Sands*, and I'm just looking to see.

10 THE COURT: I usually adhere very closely to *Sands*.
11 Very, very rarely do I deviate, but sometimes when all counsel
12 in a particular case think a slight modification is
13 appropriate, I yield to that.

14 MR. RIOPELLE: The modification here was simply
15 meant to draw the jury's attention to some of the facts that
16 they have heard in the case, and what some of the evidence
17 that is really key to the case.

18 THE COURT: The government?

19 MR. BINI: Your Honor, the government believes this
20 excess verbiage in what I know is going to be a long reading
21 for your clerk, and I think it's captured in the *Sands*
22 instruction, so we would ask for a *Sands* instruction.

23 MR. RIOPELLE: I'm being accused of excess verbiage.

24 THE COURT: Shocked. By the inspector of the ever
25 like.

1 Well, as I say I usually adhere to *Sands*, and once I
2 get some yield... It covers what you're concerned about, and
3 that's why I'm going to yield.

4 MR. RIOPELLE: I think you have the general in the
5 charge as drafted, and I want to be a little more specific.

6 THE COURT: Yes, I hear you.

7 MR. RIOPELLE: Okay. My next one is on 52 of the
8 Court as proposed charge.

9 The Court had listed seven items that the jury might
10 wish to consider in determining the credibility of the
11 witnesses that it saw.

12 I had proposed the addition of a eighth paragraph,
13 which reads as follows, paragraph 8:

14 "Did the witness tell a falsehood to a law
15 enforcement agent about matters relevant to this case when the
16 witness was interviewed?"

17 We had a lot of testimony from witnesses in this
18 case, Your Honor, who admitted or testified that they told a
19 lot of lies to law enforcement agents when they were first
20 interviewed.

21 Obviously, that is something that I will argue at
22 some length to the jury. It goes to the credibility of the
23 witness. Given the fact that so many of the witnesses in this
24 case are in that position, it seems to me only correct to
25 highlight that as something that the jury may wish to

1 consider.

2 MR. BINI: Your Honor, the government prefers the
3 same instruction as you had proposed it.

4 There is, in fact, an instruction regarding prior
5 inconsistent statements.

6 THE COURT: That is correct.

7 MR. BINI: And there's also an instruction regarding
8 cooperating accomplice testimony and immunized witnesses.

9 THE COURT: Yes, I'm going not going to accept your
10 invitation, Mr. Riopelle.

11 MR. RIOPELLE: Fair enough.

12 THE COURT: It's in the nature of another thing you
13 will note is that I try to steer away as studiously as I can
14 from marshaling evidence in any case, whether a civil case or
15 a criminal case. That is in the nature of marshaling the
16 evidence.

17 I think that these non sort of case-related tests of
18 credibility of generic tests are what this charge was supposed
19 to capture, and I think the government is correct, unless you
20 have any other charges that will yield quite expressly with
21 the credibility of people who come here either immunized or a
22 cooperation agreement having lied to the government at some
23 point prior to obtaining that protection.

24 MR. RIOPELLE: Okay, I will take care of it in the
25 defense argument.

1 THE COURT: Yes, I'm sure you will, as is
2 appropriate.

3 MR. RIOPELLE: Okay, that takes me to 59.

4 Mr. Bini, am I you still ahead of you?

5 MR. BINI: Yes, you are.

6 MR. RIOPELLE: On page 59, Your Honor, we reach what
7 I think is a interesting issue about the Court's charge for
8 the testimony of immunized witnesses.

9 There are a number of immunized witnesses in this
10 case, but interestingly enough, these witnesses are merely
11 all, with the exception of David Ben-Bassat, testifying about
12 other acts, similar acts, predecessor acts to the acts charged
13 in the indictment.

14 So the Court's charge, which is the standard charge
15 reads that you can convict these defendants on that testimony
16 alone, but that testimony does not go to the charges in the
17 indictment.

18 And even Mr. Ben-Bassat's testimony does not
19 directly go to the charge -- you know, he doesn't say, I know
20 the market was manipulated. I did wrong and I did it with
21 others. His testimony was different. In fact, I believe his
22 testimony was that he didn't think he had done anything wrong.

23 So it would be my position that in this unique
24 circumstance of this case, the testimony of the immunized
25 witnesses is not alone enough to convict the defendants of

1 guilt beyond a reasonable doubt, because these witnesses are
2 not testifying directly about the issues charged as per the
3 events, charged as the crimes.

4 Most of the immunized witnesses are testifying about
5 the creation of Northwest Resources some years before the
6 conspiracy in the indictment is charged, and so I think this
7 language needs to be adjusted. I have my proposal here, and
8 that is the nature of my objection. It's kind of an
9 interesting one.

10 So I don't know what the Court makes of that.

11 THE COURT: Yes, I think -- I agree. I think it's a
12 very interesting one.

13 MR. RIOPELLE: Yes.

14 THE COURT: Does anyone on the government's side
15 disagree with Mr. Riopelle's analysis that the subject matter
16 of testimony of the immunized witnesses do not relate directly
17 to the charged conduct, and that testimony alone indeed would
18 not be enough to convict?

19 MR. BINI: I think the testimony of David Ben-Bassat
20 would be enough.

21 But in any event, Judge Sand and the imponent wisdom
22 of the Sand instruction has realized this in the instruction
23 where they say: "Like the testimony of cooperating witnesses,
24 you may convict the defendant on the basis of such witness'
25 testimony alone, if you find that the testimony proves that a

1 defendant is guilty beyond a reasonable doubt."

2 So I think that goes to that. If the testimony
3 proves them guilty beyond a reasonable doubt, I think that
4 with respect to Wesley Smith, Taylor Edgerton, while we think
5 that the testimony was very important, and if you believe
6 them, I would concede that that does not establish guilt
7 beyond a reasonable doubt.

8 THE COURT: What would you change, Mr. Riopelle?

9 MR. RIOPELLE: My change was -- in the first
10 paragraph, I would change that first sentence to read -- it's
11 the first sentence really of the instruction:

12 "As you were informed during the trial, comma, some
13 of the testimony before you came from witnesses who were
14 assured by the government that in exchange for testifying
15 truthfully, completely and fully, they would not be
16 prosecuted," and then I've stricken the phrase "based on their
17 testimony for any crimes that they may have admitted to the
18 government, comma, or here in the court."

19 Then the next paragraph I would have it read as
20 follows:

21 Like the testimony of cooperating witnesses, the
22 testimony of a witness who has been -- "Like the testimony of
23 cooperating witnesses, comma, the testimony of a witness who
24 has been promised that he will not be prosecuted, should be
25 examined by you with greater care than the testimony of an

1 ordinary witness. You should scrutinize it closely to
2 determine whether or not it is colored in such a way as to
3 place guilt upon the defendant in order to further the
4 witness' own interest. You must consider whether such a
5 witness was motivated to make up testimony in the hope or
6 belief that such was more likely to ensure the witness' own
7 freedom from prosecution, or ask yourselves did the witness
8 believe his interests would be best served by testifying
9 truthfully, it is for you to decide based on your own
10 perceptions and common sense to what extent, if at all, the
11 witness' interest has been affected or colored -- or has
12 affected or colored his testimony, you should carefully
13 scrutinize all the evidence." And then I've got "in
14 connection with the witness' testimony." And what is what I
15 propose, Judge.

16 MR. BINI: Your Honor, the government does not
17 oppose the changes to the first paragraph that are proposed by
18 defense counsel, however, after that the government would
19 prefers the *Sands* instruction.

20 THE COURT: How much of that second paragraph did
21 you change? What words did you take out and what words --

22 MR. RIOPELLE: I took out the words as follows. The
23 paragraph in *Sands* I believe reads:

24 "Like the testimony of cooperating witnesses, comma,
25 you may convict the defendant on the basis of such witness'

1 testimony alone if you find that the testimony proves the
2 defendant guilty beyond a reasonable doubt," period.

3 THE COURT: And that's the --

4 MR. RIOPELLE: That's the piece I took out.

5 THE COURT: And you added to replace that in that
6 sentence with what?

7 MR. RIOPELLE: I then just continued on with the
8 next sentence in *Sands* which is:

9 "The testimony of a witness who has been promised
10 that he will not"...

11 THE COURT: In other words, you added nothing new?

12 MR. RIOPELLE: I added nothing new. I just took out
13 the bit about "you can convict him on that testimony alone."

14 THE COURT: Yes, I will accept the change.

15 MR. RIOPELLE: Thank you, Your Honor.

16 My next objection is on 62, so I think Mr. Bini --

17 MR. BINI: No.

18 MR. RIOPELLE: Okay. This is the Court's similar
19 act charge. It is the standard charge from *Sands*. But we
20 have a case in which the similar acts are really prior acts,
21 background-type proof rather than modus-operandi-similar act
22 type proof. So I have proposed a change to this charge as
23 well just to make it more, tighten the applicable to the
24 circumstances of this case, Your Honor.

25 What I have done is proposed an amended charge which

1 would read as follows:

2 "During this trial, you have heard evidence that on
3 other occasions a defendant engaged in conduct that was
4 similar in nature to the conduct charged in the indictment, or
5 was background to the conduct charged in the indictment.
6 Evidence of prior or similar acts was admitted as background
7 evidence to show the development of the relationships of trust
8 between the defendant Discala and the government's witnesses,
9 and to provide background evidence of the charged crimes and
10 how they developed. However, I caution you that a defendant
11 is on trial only for committing the acts alleged in the
12 indictment. You may not consider evidence of any previous or
13 similar acts as a substitute for proof that any defendant
14 committed the crimes charged in this case, nor may you
15 consider this evidence as" -- evidence as -- I'm having
16 difficulty reading my draft. "You may consider it only for
17 the limited purpose of providing you with the background of
18 the offense charged in the indictment."

19 So what I'm really trying to get at, Judge, is I
20 think that, for example, the Northwest Resources proof, which
21 is a very big part of the case here, is, you know, Ms. Cane is
22 really not a direct actor in that proof, she's not somebody
23 who is dealing with the witnesses at all. And I think it's
24 important that the jury understand that this is admitted as
25 sort of background to the proof in the case. It is not

1 admitted as a prior similar act to what happened in the case,
2 and I think by amending the charge in this way, it emphasizes
3 that it's admitted as background makes the purpose of the
4 Court's admission of the evidence clearer to the jury.

5 MR. BINI: Your Honor, the government believes that
6 we should have the standard *Sands* instruction here, because,
7 among other things, there was admission during the testimony
8 of Matt Bell of manipulation of other stocks, precisely for
9 404(b) purposes -- manipulation with Discala with other stocks
10 precisely for 404(b) purposes to show the absence of mistake.
11 So that we believe that's classic 404(b) evidence, so we would
12 ask for the standard same instruction.

13 MR. RIOPELLE: Yes, the strange case where the
14 evidence as it relates to Ms. Cane is really background, and
15 there may be some other 404(b) evidence as to Mr. Discala, you
16 know, some of those other transactions that are not charged.

17 MR. BINI: And the government doesn't believe that
18 the evidence regarding Northwest Resources is not at all just
19 background evidence. The government believes it goes to the
20 heart of control of the 8 million shares of Cubed as we just
21 showed with our the witnesses where we put on basically
22 recruiter, the fake CEO, and then Marche Godffrey one of the
23 fake shareholders.

24 THE COURT: I'm going to adhere to the *Sands* charge.
25 We tried to de-pluralize this as best we could.

1 MR. RIOPELLE: Thank you, Your Honor.

2 THE COURT: Try to get the jury to focus separately
3 with respect to each defendant.

4 MR. RIOPELLE: Okay. That takes me to 66, it looks
5 like. Yes, I have sort of a small quibble with what's on
6 page 66.

7 THE COURT: Okay.

8 MR. RIOPELLE: It's a quibble with the *Sands* charge,
9 I'll note.

10 The charge there talks about: "If you find a
11 reasonable doubt has been created, you must acquit him or her
12 of all charges."

13 The reason I worry about that language is it sounds
14 almost like burden shifting to the defendant requiring the
15 defendant to create a reasonable doubt.

16 I would proposes that if you -- and this is in
17 connection with the character evidence, which, of course, my
18 client has offered, I would proposes that the Court amend the
19 charge to read that:

20 "If you find you have a reasonable doubt as to the
21 defendant's guilt, you must acquit him or her of all the
22 charges," rather than saying:

23 "If you find that a reasonable doubt has been
24 created by the character evidence," because that sounds like
25 the burden shifting to me. But that may be a quibble that is,

1 you know, academic.

2 THE COURT: Does the government have any position?

3 MR. BINI: The government thinks the *Sands*
4 instruction is appropriate, and it does not shift the burden.

5 THE COURT: Yes, I will adhere to *Sands*, given the
6 number of times I make it clear that you have no burden.

7 MR. RIOPELLE: Thank you, Your Honor. That takes me
8 to page 67.

9 MR. BINI: And the government agrees with Ms. Cane
10 that this particular charge was envisioned -- I think we had
11 proposed it because Mr. Morris was in the case, and there was
12 no SEC testimony that remains in this case.

13 THE COURT: All right.

14 MR. RIOPELLE: Very good. So that's out.

15 THE COURT: So that's out.

16 Okay. Next lowest number?

17 MR. RIOPELLE: Oh, on the defendant's right not to
18 testify -- I'm up to page 68 or 69 of the Court's charge.

19 I had proposed to insert into the standard *Sands*
20 charge a little bit of language that appears at the end of the
21 chapter in *Sands* about the defendant's right not to testify;
22 that, you know, there may be any number of reasons why a
23 defendant chooses not to testify, and you should not -- and
24 that language is important I think given my client's gender
25 status to include.

1 And then at the end I had inserted some additional
2 language from that blurb in *Sands*, which reads as follows:

3 "In other words, you should simply put the whole
4 matter of the defendant not testifying out of your mind, "and
5 period there.

6 And I think there is a list and a little blurb in
7 *Sands* which somehow didn't come through on my notes here of
8 the reasons why -- the any number of reasons why the defendant
9 might not testify. It talks about she might stutter or, you
10 know, that kind of thing.

11 I think that language would be good in this
12 particular case, Your Honor, to add, and I will note that the
13 chapter in *Sands* does indicate that it can be appropriate to
14 add that language.

15 (Continued on next page.)

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1 (Continuing.)

2 MR. BINI: We will oppose and ask for the Sand
3 instruction because, among other things, besides your Honor
4 has always stressed the burden, there was actually a
5 questionnaire regarding gender status. I think this issue has
6 been really vetted and, in fact, there has not been any
7 testimony relating to this topic during the course of the
8 entire trial.

9 THE COURT: I'm going to adhere to the Sand charge.

10 And I will say this, Mr. Riopelle, this is my view
11 on this: What I think is important here is for the jury not
12 to think about this at all, to view this in only one fashion:
13 That they have been ordered by the judge not to consider the
14 fact that a defendant hasn't testified, not that I have to
15 give them a reason.

16 MR. RIOPELLE: Okay.

17 THE COURT: That it is absolutely prohibited because
18 I say so. And I've told them that twice already, first in the
19 connection with the defense case and the sooner they think of
20 nothing other than "put it out of my mind," I think it's
21 better, frankly, for the defendant.

22 MR. RIOPELLE: Okay. Thank you, Judge.

23 That takes me to the next page which is the
24 testimony of the defendant, if applicable, and it looks like
25 that's not going to be applicable.

1 THE COURT: Still pending.

2 MR. RIOPELLE: We're not done yet.

3 THE COURT: That may change. So, it will be this
4 one or that one or, in the odd situation where Mr. Discala
5 testifies and Ms. Cane doesn't, both.

6 MR. BOWMAN: Your Honor, with respect to Page 70,
7 the interest in the outcome of the case portion of the charge
8 I object to.

9 There's no real reason to tell the jury that the
10 defendant has an interest in the outcome of the case because,
11 of course, everybody in the courtroom knows it. And by
12 singling this out, you're saying that the defendant is the
13 only person who has an interest in the outcome when nobody
14 gives that kind of a charge to, for example, an FBI agent who
15 has devoted weeks or months or years to an investigation.

16 So, I would object to the portion of the charge, and
17 just omitting the words with an interest in the outcome of the
18 case.

19 MR. BINI: Your Honor, if a defendant chooses to
20 testify, the Government would ask for the standard charge that
21 the defendant, of course, is the most interested of any
22 witness and it's appropriate for the jury to consider.

23 THE COURT: If either defendant testifies, I'll give
24 the standard charge.

25 MR. RIOPELLE: My next comment is on Page 76.

1 THE COURT: Anything between 70 and 76? No.

2 MR. BINI: Not from the Government.

3 MR. RIOPELLE: Judge, on Page 76, I think we are
4 missing a verb. I think after the word "weight," which is
5 four lines up from the bottom of that paragraph, we need to
6 insert either "is" or "should."

7 The sentence reads: It is exclusively your duty,
8 based upon all the evidence and your own good judgment, to
9 determine whether the prior statement was inconsistent and, if
10 so, how much, if any, weight to be given to the inconsistent
11 statement in determining whether to believe all, part, or none
12 of the witness' testimony.

13 I think that sentence should read: And, if so, how
14 much, if any, weight is to be given.

15 Or: If so, how much, if any, weight should be
16 given.

17 I think there's a missing "to be" in that sentence.

18 THE COURT: Sounds like you're right.

19 MR. BINI: No objection to "should" be given.

20 MR. RIOPELLE: The Government prefers "should," so
21 we agree on "should."

22 THE COURT: You got that, Mr. Mejia?

23 THE LAW CLERK: Yes, sir.

24 MR. RIOPELLE: I have my notes if Mr. Mejia needs
25 them.

1 THE COURT: After 76?

2 MR. RIOPELLE: I'm up to 81.

3 THE COURT: 81.

4 MR. RIOPELLE: Okay. I propose that we add a
5 sentence at the bottom of that charge. That is the charge
6 about the use of conjunctive and disjunctive in the
7 indictment.

8 I propose that the charge have a sentence added at
9 the bottom: However, I remind you that the defendants are on
10 trial only for committing the acts alleged in the indictment
11 and you may not consider evidence of any previous or similar
12 act as a substitute for proof that a defendant committed the
13 crimes charged in this case.

14 We had a great deal of proof of prior and similar
15 acts, Judge, and it seems to me a good idea to focus the jury
16 on the fact that they need to focus on the evidence of the
17 crimes charged in this case rather than conduct that was
18 admitted as background.

19 MR. BINI: Your Honor, the Government would ask for
20 the standard conjunctive and disjunctive charge. And the
21 language here doesn't really relate to the proposed --

22 THE COURT: And I think it's covered in other parts
23 of my charge.

24 MR. RIOPELLE: Okay. Thank you, Judge. My next
25 comment is on Page 100, so we're making progress.

1 Mr. Bini, do you have anything before Page 100?

2 MR. BINI: I do not.

3 MR. RIOPELLE: On Page 100, the Court cautions the
4 jury that a defendant's mere presence at the scene of an
5 alleged crime doesn't make the defendant guilty of being a
6 member of the conspiracy.

7 This cautionary instruction is given in the midst of
8 the conspiracy instruction. I would propose that rather than
9 have the phrase "at the scene of the alleged crime" I would
10 say "during an alleged conspiracy," so it would read as
11 follows: I want to caution you, however, that a defendant's
12 mere presence during an alleged conspiracy does not by itself
13 make him or her a member of the conspiracy.

14 And then you could strike the first word of the next
15 line, "similarly," and just go on to read: Mere association
16 with one or more members of the conspiracy does not
17 automatically make a defendant a member.

18 That is my proposal for page 100?

19 THE COURT: Anybody have a problem with that?

20 MR. BINI: Your Honor, the Government prefers the
21 Sand instruction as given because the mere presence at the
22 scene -- excuse me, "mere presence during a conspiracy" is
23 different than the being at the scene of an alleged crime.

24 The Sand instruction, I think, classically is more
25 of like the drug context or the robbery context, where there's

1 someone literally at the scene of the crime and you're in the
2 wrong place at the wrong time sort of situation is what it
3 envisions. However, if you change it to the defendant's mere
4 presence during a conspiracy, well, conspiracy is for a long
5 period of time, particularly as charged here. I think that's
6 different and suggest that if a defendant, for example, keeps
7 being involved in something, that that is not something the
8 jury should consider and the Government thinks it's much the
9 opposite.

10 So, we would ask for the mere presence at the scene
11 of alleged crime does not by itself make him or her a member
12 of the conspiracy, which is the standard instruction.

13 THE COURT: The change, I'm afraid, Mr. Riopelle,
14 may create more confusion than is intended by you, first of
15 all. And I don't particularly like the charge, but I don't
16 particularly think the remedy makes it any better.

17 MR. RIOPELLE: Okay.

18 MR. BOWMAN: Your Honor, may Mr. Discala be excused?

19 THE COURT: Absolutely.

20 DEFENDANT DISCALA: Thank you, your Honor.

21 THE COURT: Please.

22 As long as they know they have a right to stay.
23 With no jury here, they can go.

24 MR. RIOPELLE: Okay. That takes me up to Page 101,
25 I believe.

1 THE COURT: Okay.

2 MR. RIOPELLE: I would like to add the phrase "if
3 you find unanimously that the" after the words "in sum," so
4 that the first line at the bottom paragraph reads: In sum, if
5 you find unanimously that the defendant had an understanding
6 of the unlawful character of the conspiracy, and then:
7 Intentionally engaged, advised, assisted in it or for the
8 purpose of furthering the illegal undertaking.

9 I would like to add the concept of unanimity there
10 in that phrase on 101.

11 THE COURT: Any objection from the Government?

12 MR. BINI: You want: In sum, if you find
13 unanimously defendant...

14 MR. RIOPELLE: In sum, if you find unanimously that
15 a defendant, with --

16 MR. BINI: And it goes on with the rest of the
17 charge?

18 MR. RIOPELLE: Yes.

19 MR. BINI: No objection, your Honor.

20 THE COURT: So be it.

21 MR. RIOPELLE: And then my next comment is on Page
22 102. I would like to add the following sentence to the end of
23 this charge: And I remind you that the burden remains on the
24 Government at all times to prove each and every element of the
25 crime charged beyond a reasonable doubt.

1 THE COURT: You don't think I say that enough?

2 MR. RIOPELLE: It can never be said enough.

3 THE COURT: Moving right along, what's your next
4 one?

5 MR. RIOPELLE: That one is overruled. Okay.

6 My next one is on Page 109. And I want to add the
7 word at the bottom of the paragraph that ends "find the
8 defendant guilty," I want to add the word "unanimously."

9 You see that line that begins, Fact that all of you
10 find to be false in order to find the defendant guilty, I want
11 to add that they have to find it unanimously there.

12 So, I want that sentence to read as follows: There
13 must be at least one specific pretense, representation, or
14 promise about a material fact that all of you find unanimously
15 to be false in order to find a defendant guilty.

16 THE COURT: That's even a better "unanimously" than
17 the last one.

18 MR. RIOPELLE: There you go. A winner, I think.

19 THE COURT: Yes.

20 MR. RIOPELLE: My next objection appears on Page
21 114. I object to the conscious avoidance language there that
22 appears in the paragraph beginning: In determining whether a
23 defendant acted knowingly, et cetera.

24 I don't believe this is an appropriate case for a
25 conscious avoidance charge. I think that the Government's

1 theory is that my client was a wrongdoer and knew darn well
2 what was going on. And the problem with the conscious
3 avoidance charges is they dilute the burden of proof, and I
4 don't think that the defendant has challenged the issue of
5 knowledge in any great way in the case.

6 MR. BINI: Your Honor, the Government thinks that
7 the Defendant Cane has challenged the issue of knowledge and
8 Defendant Discala has as well from the opening statements.

9 Defendant Discala's opening statement was that he
10 relied on all these people around him and that everybody
11 betrayed him, in substance. And while Ms. Cane has both in
12 her opening and during cross-examination presented the jury
13 repeatedly that the use of this Ben-Bassat account was
14 innocent, that she just did selling from that account, and
15 that she did not participate deliberately in the fraud scheme,
16 the Government has presented evidence, including call after
17 call where Discala is informing her of what he's doing and
18 there's also text messages from other co-conspirators.

19 So, the Government believes that Defendant Cane and
20 Defendant Discala both have claimed to not be aware of the
21 pump and dump that was happening right around them. And for
22 this reason, we think that this instruction is appropriate.

23 In looking at the case law, I was looking at *United*
24 *States v. Ebberts*, 458 F. 3rd 110, Second Circuit decision from
25 2010, where the Second Circuit affirmed giving the conscious

1 avoidance/willful blindness instruction with respect to Bernie
2 Ebbers, where he had indicated that he signed 10-Ks and -Qs
3 and just didn't look at them. I think similarly here we have
4 testimony and evidence that suggests that Cane had to know
5 based on the use of the Ben-Bassat account, and, so, she was
6 closing her eyes between the Ben-Bassat account and the other
7 evidence to the fraud scheme.

8 THE COURT: I think a conscious avoidance charge is
9 warranted on the evidence and the argument and I'm going to
10 overrule the objection.

11 MR. RIOPELLE: Thank you, your Honor. I'm now up to
12 Page 116 of the charge.

13 THE COURT: 116. Okay.

14 MR. RIOPELLE: I would like to add the following
15 language after the phrase "caused by him and her," which is in
16 about the middle of the page where a paragraph ends.

17 I would change the period to a comma and add the
18 phrase: If you find the proof establishes beyond a reasonable
19 doubt that such actions were taken or such representations
20 were made with an intent to defraud.

21 MR. BINI: Your Honor, the Government would ask for
22 the standard instruction because, among other things, this
23 would add practically another sentence to this. This is kind
24 of the no alternate harm instruction and the Government would
25 ask for the standard instruction.

1 THE COURT: I'm going to adhere to the Sand standard
2 instruction.

3 MR. RIOPELLE: That takes me to Page 132, your
4 Honor. There again, the Court has included a reference to
5 conscious avoidance. I have objected to that inclusion, and I
6 just make my objection again for the purposes of the record.

7 THE COURT: Absolutely.

8 MR. RIOPELLE: That takes me to Page 134, where,
9 again, there is the same phrase "representations caused by him
10 or her," and I have requested and do request that the same
11 phrase we just discussed be included.

12 I have the sense that Mr. Bini objects --

13 MR. BINI: Yes.

14 MR. RIOPELLE: -- and I know how that comes out.

15 THE COURT: Same objection, same ruling.

16 MR. RIOPELLE: Right. Okay.

17 That takes me to Page 158, Judge.

18 THE COURT: 158, you said?

19 MR. RIOPELLE: 158, yes, sir.

20 At 158, at the end of this charge, there is the
21 following sentence: Each specific use of a telephone or the
22 mail in furtherance of the scheme to defraud constitutes a
23 separate and distinct criminal offense.

24 That's in connection with the conspiracy charge, and
25 I don't think this instruction needs to be given in connection

1 with a conspiracy charge. There are separate and distinct
2 mailings and wires that are charged as such for crimes and the
3 Court will instruct the jury as to those. But I think saying
4 every time you use a telephone, that's a crime too in the
5 context of the conspiracy charge is unfair to the defendant.

6 MR. BINI: I think your Honor made that change
7 because I don't see it on 158 of 601.

8 MR. RIOPELLE: Maybe he didn't make that change.

9 MR. BINI: You won already.

10 MR. RIOPELLE: Now I'm giving the Court a chance --

11 MR. BINI: Take it back, Judge.

12 MR. RIOPELLE: Sorry, I'm not reading my own notes
13 well at 6:30 at night.

14 MR. BINI: The Government requests a change to Page
15 163.

16 MR. RIOPELLE: I'm at 159.

17 MR. BINI: I'm sorry.

18 MR. RIOPELLE: I'd like to add the language at the
19 bottom --

20 THE COURT: What page are we on, gentlemen?

21 MR. RIOPELLE: 159. That last sentence on 159, it
22 says: Second, that a defendant knowingly and intentionally
23 became a member of the conspiracy.

24 I would like to amend that sentence to read:
25 Second, that the Defendant whom you are considering knowingly

1 and intentionally became a member of the conspiracy.

2 Emphasizing the individuality of guilt as to each
3 defendant.

4 MR. BINI: No objection, your Honor.

5 THE COURT: Yes, you got that one.

6 MR. RIOPELLE: Fantastic.

7 And on 163, Mr. Bini?

8 MR. BINI: Yes.

9 On 163, Overt Act D, the Government did not present
10 evidence regarding Overt Act D, so the Government would ask
11 that that be removed.

12 THE COURT: No objection?

13 MR. BINI: That's on or about October 17, 2013,
14 Ofsink caused an e-mail to be sent to Shapiro, which e-mail
15 attached a sham consulting agreement. And it goes on.

16 THE COURT: All accord in deletion?

17 MR. BOWMAN: Yes.

18 MR. RIOPELLE: No objection.

19 THE COURT: Make sure that Ben has that, Mr. Bini.

20 MR. RIOPELLE: I can give him my copy. Thank you,
21 Ben.

22 Judge, I'm pleased to report I have no further
23 comments on the charge.

24 THE COURT: How about you, Mr. Bini?

25 MR. BINI: Your Honor, I was just pulling up --

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1 Ms. Jones had a redacted indictment -- I know you're not
2 sending it back, but where we had proposed changing some of
3 the names that are set out in the indictment. I just want to
4 pull that up, if I could, because it affects the overt acts.

5 THE COURT: Okay. You want to delete them?

6 MR. BINI: Well, we've presented evidence on the
7 rest other than D, which we asked to remove. But with respect
8 to some of the individuals named, some of the
9 co-conspirators -- give me one moment. Ms. Jones is just
10 zooming ahead to the portion of the indictment where we put in
11 the names.

12 THE COURT: Oh, the days of black felt marker, how
13 to make it appear and disappear in the ether.

14 MR. BINI: So, on Overt Act F, the Government would
15 ask to take out "Co-conspirator 2" and put in instead "Victor
16 Azrak."

17 THE COURT: Any objection?

18 MR. ROSS: No objection.

19 MR. RIOPELLE: No objection, Judge.

20 MR. BINI: It appears twice on Overt Act F, and I'll
21 give my hand-changed to Mr. Mejia after.

22 Then on Paragraph G, the Government would ask that
23 "Co-conspirator 3" be changed to "Marc Wexler."

24 THE COURT: I assume again no objection.

25 MR. ROSS: No objection.

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1 MR. RIOPELLE: No objection, Judge.

2 MR. BINI: Paragraph I, the Government would ask to
3 change "Co-conspirator 2" to "Victor Azrak."

4 MR. ROSS: No objection.

5 MR. RIOPELLE: No objection.

6 MR. BINI: In Paragraph N, the Government would ask
7 to change "Co-conspirator 3" to "Marc Wexler."

8 MR. ROSS: No objection.

9 MR. RIOPELLE: No objection.

10 MR. BINI: The Government would ask to insert the
11 aiding and abetting instruction wherever your Honor think it
12 appropriate. Perhaps it would be after the first substantive
13 count, securities fraud, Count Three, which ends on Page 184.

14 THE COURT: Any objection?

15 MR. ROSS: No objection.

16 MR. RIOPELLE: No objection.

17 THE COURT: We'll add it there.

18 MR. BINI: And then the other objection, the request
19 to change the jury charge the Government has, begin on Page
20 199, where, again, we would just like to fill in with respect
21 to the counts the names of the individuals as the evidence has
22 come in.

23 On Page 199, Count Six indicates telephone call from
24 Discala to Broker 1. The Government would request to put in
25 the name "Jamie Sloan" instead of "Broker 1."

1 MR. ROSS: No objection.

2 MR. RIOPELLE: No objection.

3 THE COURT: Okay.

4 MR. BINI: On Page 200, with respect to Count Seven,
5 telephone call from Discala to instead of "Co-conspirator 2"
6 the Government would ask for "Victor Azrak."

7 MR. ROSS: No objection.

8 MR. RIOPELLE: No objection, Judge.

9 THE COURT: Okay.

10 MR. BINI: With respect to Page 201, Count Eight,
11 telephone call from Discala to instead of "Trader 1," to "a
12 trader at BNA."

13 MR. ROSS: No objection.

14 MR. RIOPELLE: No objection, your Honor.

15 THE COURT: Okay.

16 MR. BINI: On Page 202, Count Ten, telephone from
17 Discala to Co-conspirator 3, the Government would ask to put
18 "Marc Wexler" in for "Co-conspirator 3."

19 MR. ROSS: No objection.

20 MR. RIOPELLE: No objection, your Honor.

21 THE COURT: Okay.

22 MR. BINI: In addition, with respect to that call,
23 the Government put in the evidence -- the excerpt the
24 Government included did not include reference to CodeSmart or
25 StarStream, so the Government would ask to change that to

1 state: Telephone call from Discala to Marc Wexler discussing,
2 among other things, the manipulation of Cubed stock.

3 MR. ROSS: No objection.

4 MR. RIOPELLE: No objection.

5 MR. BINI: That's it from the Government.

6 The Government had one issue with respect to the
7 verdict sheet.

8 THE COURT: Let's finish the charge and then we'll
9 go with the verdict.

10 MR. BINI: Sure.

11 MR. SHROYER: We do have something to raise, your
12 Honor.

13 On Page 206 at the end of the good faith charge is
14 where we would insert a reliance on counsel charge. We've
15 provided the language of that charge to the Court previously
16 in a letter. It's hard for me to remember if it was earlier
17 this week or last week.

18 THE COURT: And we have it.

19 MR. SHROYER: This is where we think it would be
20 appropriate. We think that the evidence demonstrates with all
21 the various accusations about actions that were taken, about
22 understanding of the security law, that it's appropriate here
23 for Mr. Discala to have that charge, particularly given that
24 we're not sure yet exactly how the Government is going to be
25 spinning all these different background acts and 403(b) acts,

1 et cetera.

2 MS. JONES: Your Honor, we had briefed this issue
3 earlier and it's abundantly clear that the defendant has not
4 met any of the prerequisites to get that charge. It's not
5 even clear what attorney he's talking about, what information
6 was applied to that attorney, what advice was given to that
7 attorney -- from that attorney and whether or not in
8 Mr. Discala actually followed that advice. So, there's
9 clearly no basis for this charge.

10 MR. SHROYER: I would disagree with that
11 characterization of the evidence, your Honor.

12 There has been evidence that Mr. Discala suffered
13 losses in some of the -- in particular, during certain time
14 frames on all of the three securities that were traded prior
15 to Cubed, that he sought advice about the construction of the
16 escrow accounts, that some of the various text messages and
17 phone calls demonstrate that he expressed thoughts and
18 feelings about the way the escrows were being carried out.
19 And there's no question based on the evidence that that
20 arrangement was devised by an attorney who was an expert in
21 the securities field.

22 THE COURT: There's clearly no evidence that
23 warrants the charge up to now. So, unless you have another
24 witness that you haven't told us about yet, there's no basis
25 for it.

1 MR. SHROYER: We've disclosed our witnesses at this
2 point.

3 THE COURT: Then there is no basis in the evidence
4 for that charge --

5 MR. SHROYER: Thank you.

6 THE COURT: -- given the applicable case law. So, I
7 will not charge it on the basis of the evidence that's been
8 adduced so far.

9 MR. SHROYER: The other point that I would want to
10 make about that is that it is our belief, based on the case
11 law, that it's not the same analysis as the attorney-client
12 privilege analysis, whereby there needs to be a personal
13 attorney-client relationship that's established; that this
14 defense, this attack, on the intent element, as opposed to it
15 being an affirmative defense, simply requires good faith based
16 on representations that are made.

17 And, so, we do think that the argument that -- I
18 think Ms. Jones was alluding to a higher standard that's
19 necessary than the case law allows for, so I'd like to make
20 that clear as well.

21 THE COURT: Our analysis of the case law applied to
22 the facts that I've listened to. There's no basis for that
23 charge.

24 MR. SHROYER: Understood. Thank you, your Honor.

25 THE COURT: Anything else on the charge?

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1 MR. BINI: Not on the charge.

2 THE COURT: Okay. That's Court Exhibit 1. Now
3 we'll address Court Exhibit 1-A, which is the verdict sheet.

4 (Court Exhibit 1 and 1-A, were received in
5 evidence.)

6 MR. RIOPELLE: Yes, Judge. For Ms. Cane, I just
7 noticed and note that the only issue is that there appears to
8 be some sort of word processing glitching on, How do you find
9 a particular defendant, it then says not guilty and the guilty
10 is sort of under. We just need to straighten that out so it's
11 on one line.

12 THE COURT: Yes, it will be on one line.

13 MR. RIOPELLE: I notice it's kind of glitchy there.
14 I'm sure Mr. Mejia will know how to fix that up.

15 Other than that, Ms. Cane does not have any comments
16 on the verdict sheet.

17 MR. BINI: Your Honor?

18 THE COURT: Mr. Bini?

19 MR. BINI: We had one request, which is that with
20 respect to the overt acts, there's sort of a special jury
21 instruction here, and I apologize because I should have
22 submitted a proposed verdict sheet. I know --

23 THE COURT: You allegedly did. Everybody allegedly
24 did. We couldn't find any.

25 MR. BINI: We did not.

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1 I know when I was part of the trial team before your
2 Honor in October/November 2015, the verdict sheet we proposed
3 included such a special verdict format as to which specific
4 overt acts were found in *United States v. Kirschner, et al.*
5 However, since that time, I know in our unit, in revisiting
6 this and looking at the 371 charge, we have requested to just
7 have the guilty or not guilty because the charge itself, the
8 371, the charge regarding the 18 U.S.C. 371 charge, makes
9 clear that the jury must unanimously find one overt act. So,
10 the Government believes that is sufficient and that the
11 special verdict sheet is not required.

12 I would note that since I had the opportunity to try
13 that case before your Honor in at least two other trials I'm
14 aware of in the district; in *United States v. Petrossi*,
15 16-CR-234 before Judge Cogan, and I know in the *Shkreli* and I
16 believe in *Greebel*, I believe that was 371 charge as well, in
17 both of those trials before Judge Matsumoto the verdict sheets
18 did not have the specific overt acts.

19 So, we would request it without the overt acts if
20 your Honor agrees.

21 MR. RIOPELLE: I like it with the overt acts.

22 THE COURT: They come from you ultimately, Mr. Bini.

23 MR. BINI: That's true, your Honor, and we bear the
24 burden.

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(Continued on next page.)

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1 (Continuing.)

2 THE COURT: They need to find one to convict, so
3 I'll leave it in.

4 MR. ROSS: We have no November other comments on the
5 verdict sheet.

6 THE COURT: Okay, good. So night court is almost
7 over.

8 MS. JONES: Your Honor --

9 THE COURT: Maybe not.

10 MS. JONES: There are two brief issues that I'd like
11 to raise with you regarding the current witnesses on the
12 stand, Ms. Eckhart. My understanding was that she was going
13 to testify along similar lines like the Government's witness
14 Joan Mazella, that she reviewed certain bank records, she
15 reviewed certain brokerage records, and based on her review
16 and analysis she prepared reports that summarized those
17 records, that that is what she was going to testify about.

18 Assuming that we're talking about the charged stocks
19 in this case, that's fine. However, based on the questioning
20 to date in which Ms. Eckhart has stated that she's been
21 qualified as an expert in forensic accounting over 34 times, I
22 want to be clear that we are not okay with qualifying this
23 person as an expert. There has been no expert notification
24 provided to the Government. There has been no summary of her
25 opinions or any of that. So to the extent that there is

1 intending to be testimony of a forensic accounting expert
2 nature that goes beyond her review of just summarizing the
3 bank records and brokerage records, we're going to object.
4 And I just want to make that clear.

5 THE COURT: I thought it was clear. It's that line
6 that, I frankly considered what -- she's not an agent -- what
7 Ms. Mazella did, that's in the nature of specialized
8 knowledge, so it's in that middle field. And we don't declare
9 them expert witnesses, but we allow that specialized knowledge
10 in. I assumed that's what we would hear from Ms. Eckhart as
11 well.

12 MS. JONES: That's fine. The second issue, is that
13 I want tomorrow to go quickly and smoothly so we can move on
14 and get to closings as quickly as possible. I don't want
15 there to be back and forth or delay, but I do want to make it
16 clear that it's the burden of the defense counsel to lay the
17 foundation for these charts and make sure that the charts are
18 based on admitted evidence.

19 Defense counsel has asked me twice if I would just,
20 if the Government is prepared to stipulate that the binders of
21 4,500 pages that they gave me as the underlying analysis if I
22 wanted to stipulate that that's admissible. I'm not going to
23 do that. I do not have the time to sit down and match up what
24 is an admitted Government's Exhibit and what is not; what is a
25 business record and what is not.

1 To the extent that there are discreet, specific
2 documents that they want admit as business records and we can
3 agree that they are authentic, that's fine. But the burden
4 should be on the defense counsel to lay the foundation based
5 on admitted exhibits that have been produced to date. We have
6 a business records certification and we've moved into evidence
7 all the bank records we have for Discala, all the brokerage
8 records that we have for Discala.

9 I asked Mr. Cheng, are these brokerage and bank
10 statements the same as what has been admitted into evidence
11 and he said he wasn't sure, he didn't know. The burden should
12 be on them, not me, to figure that out.

13 THE COURT: I agree.

14 MR. ROSS: Judge, Mr. Cheng is not here. I
15 understand what the Government is saying and --

16 THE COURT: They have to be within, rooted in the
17 evidence.

18 MR. ROSS: We understand, your Honor.

19 THE COURT: Okay. Ms. Eckhart has got to be
20 prepared to say that.

21 MR. HEIN: I just wanted to raise a logistical
22 matter for tomorrow. Obviously, we don't know how long this
23 witness will last or whether the Government will put on a
24 rebuttal case. But assuming the witness lasts an hour,
25 hour-and-a-half, around noon, the Government estimates our

1 closing is probably around three hours. If we were able to
2 break for lunch earlier than we normally do, perhaps at noon,
3 and reconvene at one to commence. I think that would probably
4 be best, at least for the Government timing wise. I wanted to
5 mention that to your Honor.

6 I also wanted to mention to, your Honor, that given
7 we estimate it will be three hours, to see if we can take a
8 short break about halfway through, just a bathroom break.

9 THE COURT: Yes, I don't have a problem with that
10 either.

11 MR. RIOPELLE: Your Honor, Roland Riopelle for the
12 defendant Kyleen Cane. What is the Court's practice with
13 respect to the defense closings? Do we go from the bottom of
14 the caption up, or top of the caption down?

15 THE COURT: Here is normally what I do, allow the
16 defendants to decide first among themselves as to who is going
17 to go first. If there is a disagreement strategy-wise, then I
18 usually take the first named defendant first.

19 MR. ROSS: That's fine, Judge.

20 THE COURT: Just the way, Mr. Riopelle, you went
21 first on with your case. That was on agreement. It's not a
22 problem.

23 MR. RIOPELLE: Okay.

24 THE COURT: If you guys agree, that's fine. If not,
25 it will be Mr. Discala who will go first.

1 With respect to defense, so we can time it out, with
2 respect to defense closings do we have any estimates?

3 MR. ROSS: Judge, my estimate would be an
4 hour-and-a-half perhaps two.

5 MR. RIOPELLE: I think mine will be similar in
6 length, your Honor.

7 THE COURT: Okay. The Government is to be also on
8 notice for their rebuttal close, it has to be linked to the
9 something that one of the these guys said. We are not going
10 to have another round two of round one.

11 MS. JONES: Okay, your Honor.

12 THE COURT: So it's plain to me.

13 MR. RIOPELLE: I would like to ask a question in
14 that regard. Are there tape recordings that have been
15 admitted in evidence that have not been played during the
16 trial?

17 MS. JONES: I don't think so. I think our intent
18 was to only admit the items that we wished to play.

19 MR. RIOPELLE: The reason I ask, your Honor, is with
20 my failing memory I recall the sting of the ones played during
21 the trial but I don't -- there were so many marked as
22 exhibits, I don't recall all of them. And every lawyer's
23 worse nightmare is to stand up and sum up based on what they
24 heard in the courtroom and then have something flying from out
25 of space that we haven't really dealt with in the courtroom.

1 And I don't want to be, I'm not accusing the Government of
2 doing anything wrong, I don't want to be sandbagged.

3 THE COURT: I think in that regard you worked fairly
4 well amongst all of you.

5 MR. RIOPELLE: As the Court saw today, I don't
6 remember all that was admitted.

7 THE COURT: That's why we have Henry.

8 MR. RIOPELLE: And he's not here.

9 THE COURT: We're in trouble. We'll do the best we
10 can.

11 MS. JONES: Your Honor, I think we played everything
12 all the calls. I think we played all the calls we admitted
13 into evidence. That was the intent, to only move into
14 evidence things that we actually intended to play.

15 MR. RIOPELLE: Okay. That may be right, I just want
16 to make sure that if I sum up -- I've got the notebooks that
17 the Government gave me with the calls that were played. And I
18 want to make sure that that's what I should focus on tonight
19 as I gather my thoughts. I just don't want to have something
20 come out of the blue tomorrow that I haven't anticipated;
21 although, that will certainly happen regardless.

22 THE COURT: I'm just trying to think in my own mind
23 how -- timing, it should work. We'll keep refining it as we
24 go. That sounds like an operational plan, as Mr. Hein
25 commented, about the length and codicils from the defense. I

1 think it works.

2 MR. HEIN: Thank you, your Honor.

3 MR. BINI: Your Honor, other thing that I should
4 have mentioned with respect to the verdict sheet is that I
5 would ask for the same changes, the overt acts, that I asked
6 in the overt acts as in the instructions. So I'll give those
7 to -- I'll show them to defense counsel.

8 THE COURT: That will be good.

9 MR. RIOPELLE: As long as none of the names filled
10 in are Kyleen Cane, I'm good with that, Judge.

11 THE COURT: Anything you say. Anything else before
12 we end night court?

13 MS. JONES: Not for the Government.

14 MR. ROSS: Not for Mr. Discala.

15 MS. JONES: One thing, Mr. Discala did promise
16 copies of the redacted exhibits that they want to use
17 tomorrow. So hopefully I will get copies of those within the
18 next hour or so.

19 THE COURT: That's what I understood from Mr. Cheng
20 when you talked about it at lunch time.

21 MS. JONES: I haven't received them yet.

22 THE COURT: Hopefully he's not here right now
23 because that's exactly what he and the witness are doing.
24 We'll see you all in the morning.

25 MS. JONES: Thank you.

1 MR. ROSS: Thank you.

2 MR. RIOPELLE: Thank you, your Honor.

3 (Proceedings adjourned at 7:10 p.m. to resume on
4 May 1, 2018 at 9:45 a.m.)

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